TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 85

THE UNITED STATES OF AMERICA, PETITIONER

vs.

MUNSON STEAMSHIP LINE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 17, 1930
CERTIORARI GRANTED MAY 26, 1930

SUPREME COURT OF THE UNITED STATES

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TRANSCRIPT OF RECORD

UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a District Court of the United States for the District of Maryland, begun and held in the City of Baltimore on the first Tuesday in March (being the 5th day of the same month), in the year of our Lord one thousand nine hundred and twenty-nine.

Present: The Honorable William C. Coleman, Judge Maryland District, Amos W. W. Woodcock, Esq., Attorney, George W. Collier, Esq., Marshal, Arthur L. Spamer, Clerk.

Among other were the following proceedings, to-wit:

United States of America,

vs. No. 3660 Law.

Munson Steamship Line,

PETITION FOR WRIT OF MANDAMUS AND ORDER NISI.

(2) Filed 10th July, 1928.

DISTRICT COURT OF THE UNITED STATES
DISTRICT OF MARYLAND
JUNE TERM, A. D. 1928.

United States of America,
Petitioner.

v. No. 3660 Law

Munson Steamship Line,
Respondent.

34 Stat. L. 586. 587.
34 Stat. L. 594.
41 Stat. L. 474.

To the Honorable, the Judge of the United States District Court for the District of Maryland.

United States of America by the United States Attorney for the District of Maryland, acting for and under the direction of the Attorney General of the United States, at the request of the Interstate Commerce Commission of the United States, made under authority of Section 20 (9) of the Act of Congress approved February 4, 1887, as amended, entitled "An act to regulate commerce," now comes and brings this proceeding by way of petition for a writ of mandamus against the Munson Steamship Line, and respectfully shows:

1. That before and throughout the period from May 1, 1927, to May 1, 1928, the MUNSON STEAMSHIP LINE, herein called respondent, was, and still is, a corporation organized and existing under and by virtue of the laws of the State of New York; with offices located in New York, N. Y., and Baltimore, Md.; that (3) during said period said defendant, by means of its steamships was, and still is, engaged as a common carrier in the transportation of property, for hire; between Baltimore, Md., on the one hand and Miami and Jacksonville, Fla., on the other; that throughout said period said respondent did, and still does regularly dock its steamships at a certain pier in Curtis Bay at said Baltimore, (commonly known as Merchandise Pier, of The Baltimore & Ohio Railroad Company), and at said pier did, and still does, interchange shipments with certain railroads, as hereinafter more fully related; that throughout said period the Western Maryland Railway Company, The Baltimore & Ohio Railroad Company, the Wabash Railway Company and The Pennsylvania Railroad Company were, and still are, corporation common carriers and, by means of their respective railway lines and routes, were, and still are, engaged in the transportation of property for hire, in interstate commerce, between said Baltimore and various points in

other states, including Pennsylvania, Michigan, and Indiana, and throughout said period kept, and still keep, on file with the Interstate Commerce Commission, at Washington, D. C., schedules and tariffs of rates and charges upon which such property was, and still is, transported, as in that behalf required by law; that throughout said period said respondent, in conjunction with other common carriers, including the ones above mentioned, did, and still does, maintain and operate certain through routes and did, and still does, transport thereover shipments of property, for hire, in interstate commerce, partly by railroad and partly by water, under a common arrangement for continuous carriage
(4) and shipment, as hereinafter more fully described; and throughout said period said respondent and the other common carriers above mentioned were, and still are, subject to the provisions of the Act of Congress, approved February 4, 1887, entitled "An act to regulate commerce", and to the acts of Congress amendatory thereof and supplementary thereto.

2. That the following description, which pertains to an actual shipment, is illustrative of the manner in which respondent has engaged, and is still engaging, in interstate transportation subject to said Act to regulate commerce, as amended: That on, to wit, December 10, 1927, at York, Pa., one Chas. C. Fischer, did deliver to said Western Maryland Railway Company, for through transportation over its line of railway to Baltimore aforesaid, thence via respondent's steamship line to said Miami, certain property, to wit, 446 bags of tankage and fertilizer mixture, of an aggregate weight of, to-wit, 33,850 pounds, that being a carload lot, loaded in a car bearing the initials and number "W.M. 25830"; that said shipment was delivered to said Western Maryland Railway Company at said York upon a shipping order, in words and figures as follows, to-wit:

THIS SHIPPING ORDER must be legibly filled in, in ink, in indelible pencil, or typewritten and retained by the Agent.

Shipper's No. _____

Agent's No. _____

~~WESTERN MARYLAND RAILWAY COMPANY~~

~~THE PENNSYLVANIA RAILROAD COMPANY~~

RECEIVE, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order,

at York, Pa. December 10, 1927.

from Chas. C. Fischer

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to Chas. C. Fischer C/o Munson Steamship Line (Mail or street address of consignee—For purposes of notification only.)

Destination Baltimore State of Md. County of _____

Route W.M.R.R.

(Delivering Carrier) Car Initial W.M. Car No. 25830

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
446	Brgs Tankage and Fertilizer Mixture - - - - - -	33,850		
	For Chas. C. Fischer, Miami, Florida.			

If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (See Section 7 of conditions.)

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ _____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$ _____

*If this shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ per _____

Chas. C. Fischer Shipper.

Per C. F. Fischer

Permanent postoffice address of Shipper _____

The Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

E.H.Miller, Agent.

8. Rec'd.12-10-27

2

(6) that upon delivery of said shipment at York, as aforesaid, said Western Maryland Railway Company did transport the same over its railway line from York to Baltimore and on, to wit, December 14, 1927, did deliver said shipment to respondent at said Merchandise Pier, whereupon respondent did then and there load said shipment into its steamship "Munlisto" and on, to wit, December 15, 1927, in said steamship, did transport said shipment by water from Merchandise Pier, Baltimore, to Miami, at which latter port respondent did deliver it to said Chas. C. Fischer, the consignee thereof; that the charges accruing to said Western Maryland Railway Company, for the transportation of said shipment via its line from said York to said steamship "Munlisto" in Baltimore, amounted to $43.76, based and computed on the lawful rate of 13 cents per 100 pounds, which rate theretofore had been duly filed with said Interstate Commerce Commission; that upon delivery of the shipment at Miami, said respondent did collect from Chas. C. Fischer, the consignee, the sum of $128.39, of which sum $43.76 represented charges of the Western Maryland Railway Company for transporting the shipment from York to Baltimore, and $84.63 represented charges of the respondent for transporting the shipment from Baltimore to Miami; that on, to wit, December 21, 1927, said respondent did pay said sum of $43.76 to the Western Maryland Railway Company at said Baltimore; that said shipment was in continuous possession of the Western Maryland Railway Company and the Munson Steamship Line from the time it was tendered at York for transportation until it was delivered to consignee at Miami, as hereinbefore related.

3. That under the provisions of said Act to regu-
late commerce, as amended, and more particularly Sec-
(7) tion 6 thereof, the duty at all times mentioned herein, was and still is upon respondent to file with said Interstate Commerce Commission, at Washington, D. C., schedules and tariffs of rates and charges upon which property has been and is being transported by respondent in interstate commerce, partly by railroad and partly by water, under a common arrangement for

continuous carriage and shipment, and under the provisions of said Section 6 of said Act the duty likewise was and still is upon respondent to refrain from engaging and participating in the transportation of property, as aforesaid, unless the rates and charges upon which such property is transported by said respondent are filed with said Interstate Commerce Commission and published in accordance with the provisions of said Act.

4. That at none of the times mentioned in this petition did said respondent have on file with said Interstate Commerce Commission any tariffs and schedules of rates and charges; that although said respondent has been requested by said Commission to file and publish schedules and tariffs of rates and charges in the manner required by the provisions of said Act to regulate commerce, said respondent has refused and still refuses to so file said schedules and tariffs; and that said Commission is without remedy or power, other than the extraordinary process of mandamus, to compel said respondent to comply with the provisions of said Act to regulate commerce, as amended.

5. WHEREFORE PETITIONER PRAYS that a peremptory writ of mandamus issue from, and be directed by, this Court to said respondent, Munson Steamship Line, commanding it forthwith:

(a) To comply with the provisions of said Act to (8) regulate commerce, as amended, particularly in respect of the filing of schedules and tariffs of rates and charges as required by Section 6 of said act.

(b) To cease and desist from engaging and participating in the transportation of property, for hire, in interstate commerce, partly by railroad and partly by water, under a common arrangement for continuous carriage and shipment, unless and until said respondent has filed with said Commission as aforesaid, its schedules and tariffs of rates and charges and has otherwise complied with the provisions of said Section 6 of

said Act, as amended, in respect of the filing of said schedules and tariffs.

A. W. W. WOODCOCK,
United States Attorney for the District of Maryland.

AFFIDAVIT

State of Maryland,
County of ....., ss:

Amos W. W. Woodcock, United States Attorney for
(9) the District of Maryland, being duly sworn, on his oath deposes and says that the several matters and things stated in the foregoing petition are true in substance and in fact, to the best of his knowledge, information and belief.

A. W. W. WOODCOCK,

Subscribed and sworn to before me this 10th day of July A. D., 1928.

(SEAL) OLIVE D. ROBINSON
Deputy Clerk District Court of the United States for the District of Maryland.

(10) **ORDER OF COURT**

Upon the above petition and affidavit, the Respondent, the Munson Steamship Line, is hereby ORDERED this 10th day of July, 1928, to show cause on or before the 24th day of July, nineteen hundred and twenty-eight, why the Writ of Mandamus, as prayed in the above petition, should not issue provided a copy of the petition, affidavit and this Order be served upon the said Respondent, or its agents, on or before the 17th day of July, nineteen hundred and twenty-eight.

MORRIS A. SOPER
United States District Judge.

ANSWER

(11) Filed 28th August, 1928.

(Style of Court and Title Omitted)

TO THE HONORABLE, THE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND:

The answer of the Munson Steamship Line to the petition in mandamus recently filed against it in this Honorable Court by the United States of America respectfully shows unto your Honor as follows:

1. Answering the first paragraph of said petition this respondent admits that it is a corporation formed under the laws of the State of New York, doing business in New York and Baltimore as alleged, and engaged as a common carrier in the transportation of property from Baltimore, among other places, to Jacksonville and Miami in Florida, and maintains docking facilities as alleged.

And this respondent admits that the Western Maryland Railway Company, the Baltimore and Ohio Railroad and the Pennsylvania Railroad (but not the Wabash Railway) are common carriers engaged in the transportation of property in interstate commerce between Baltimore and other points as alleged and have filed tariff rates in accordance with law as alleged. But this respondent denies that it "*Interchanges*" shipments with any of said railroads (or any other railroads) although (12) it does frequently receive merchandise from said railroads for account of shippers and/or consignors of said merchandise; and this respondent expressly denies that throughout the period mentioned or any other period of time it has, in conjunction with other common carriers by rail, including the ones mentioned, maintained or operated any through routes and denies that it has ever, now or heretofore, transported shipments of property for hire in interstate commerce partly by railroad and partly by water under a com-

mon arrangement for continuous carriage and shipment as alleged or otherwise. And this respondent expressly denies that either throughout the period mentioned or at any other time it is or has been subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce" or to the Acts of Congress amendatory thereof and supplementary thereto.

2. Answering the second paragraph of said petition this respondent admits the allegations thereof except insofar as are herein denied or explained. In the first place this respondent points out that the facts in detail regarding the particular shipment set out in the petition are not stated sufficiently fully and in such a way as to fairly illustrate the respondent's method of conducting its business. The customary course of business as conducted by the respondent in matters of the general nature referred to in the petition (and the particular shipment mentioned in the petition was handled in conformity therewith) is in substance that the shipper delivers merchandise to a rail carrier for transportation to Baltimore and for delivery to this respondent as agent of the shipper. The rail carrier to Baltimore issues its bill of lading to the shipper showing the destination of the shipment to be Baltimore, (13) Maryland; in due course of transportation the merchandise is delivered to this respondent as agent of the shipper, the bill of lading is surrendered to the rail carrier, the charges or freight of the rail carrier are paid by this respondent as agent of and for account of the shipper, this respondent then issues its bill of lading to the shipper for carriage of the goods by water from Baltimore, Maryland, to the point of destination. This respondent was in this case and is in similar cases instructed by the shipper what disposition to make of the goods received for his account and the bill of lading issued by this respondent is in accordance therewith. The freight rate for transportation of the goods by rail to Baltimore is in all cases fixed and determined by the bill of lading issued by the rail carrier and the same is in all cases paid by this respondent only at the request and as agent for the shipper to the rail carrier upon presentation of bills

for the freight from said rail carrier and there is no other contract in writing or otherwise, express or implied, existing between the shipper and/or this respondent with the rail carrier than that shown in the rail carrier's bill of lading. The transaction is neither in form nor in substance an arrangement or contract or agreement between the shipper on the one part and the rail carrier and this respondent jointly on the other for a "through" shipment by rail and water to a point of ultimate destination, but consists of two entirely separate contracts of carriage, one made by the shipper with the rail carrier for carriage to Baltimore, only where it terminates absolutely, (and to which the respondent as a carrier is not a party) and the other a contract of water carriage between the shipper and this respondent only (not affected in any way by the former contract of carriage with the rail carrier) to which the rail carrier is not a party and with which the latter has no concern whatever. And there is no agreement whatever between the rail carrier and this Respondent as to time or terms of further carriage, or rate of charge (14) therefore by this respondent, or any arrangement or understanding between them as to division of total charge to the shipper, nor as to any time or contingency as to payment of the rail carrier's charge.

With regard to the shipping order referred to, this respondent shows that that constitutes a transaction between the shipper and the rail carrier to which this respondent is not a party and is the action of the shipper alone. While this respondent is neither a party to nor has any responsibility whatever for the shipping order referred to, yet this respondent shows that in ordinary course of business the rail carrier will issue a bill of lading to the shipper which does or should reflect the terms of the shipping order. On the shipping order set out in the petition it appears that the goods are consigned to "Charles C. Fischer, c/o Munson *Steamship* Line, Baltimore, Maryland". The shipping order (and presumably also the bill of lading in the particular case) contained the notation "For Charles C. Fischer, Miami, Florida." This respondent shows that it did not make said notation or cause the same to be made, but further points out that the nota-

tion is no portion of the bill of lading and serves merely as a convenient memorandum for the benefit of the shipper to indicate if communicated on the bill of lading or otherwise, to this respondent that it is the intention or desire at that time of the shipper to have this respondent transport the same for his account to the point of destination mentioned. This respondent expressly shows, however, that such a notation is a mere memorandum subject to revocation by subsequent determination on the part of the shipper and that in each and every case of the receipt of merchandise under such general arrangement this respondent acts upon the express instructions of the shipper, even though they may be contrary in effect to the memorandum. That is to say, the (15) memorandum referred to is a mere memorandum, no part of a contract and subject to change at will by the shipper with respect to ultimate destination of the goods.

This respondent admits that the chronological dates with respect to collection and payment of the freight are correctly alleged for this particular case but in this connection this respondent shows that the said sequence of events has no significance with respect to and is not illustrative of the general practice of this respondent and does not reflect any common arrangement, either express or implied, with the rail carrier with respect to time or contingency of payment. That is to say, this respondent has no common arrangement or understanding of any kind with the rail carrier respecting the payment of the rail carrier for freight due to it other than the payment as the agent of the shipper of said freight in due course upon presentation of bills and entirely without respect to whether or when the freight in whole or in part is collected by this respondent from the shipper or the ultimate consignee. It is true as alleged in this particular Fischer shipment that this respondent paid to the Western Maryland Railroad Company the inland freight for transportation of the merchandise from York to Baltimore, Maryland, December 21, 1927, which was two days before the arrival of the Steamship Munlisto at Miami, Florida, and therefore probably prior to the collection by it of any part of the freight from the shipper or consignee. And

this respondent expressly shows that it is its custom of business to pay the rail carrier in such cases in due course of business and as soon as is reasonably possible upon presentation of freight bills and without regard to arrival of said merchandise at point of ultimate destination and without regard to collection or non-collection by this respondent of freight bills.

And this respondent denies that said shipment of (16) merchandise was in continuous possession of the Western Maryland Railroad Company and this respondent from the time it was tendered at York until delivery at Miami. From York to Baltimore the said merchandise was in the possession of the Western Maryland Railroad Company, at Baltimore it was in possession of this respondent as agent for the shipper, and from Baltimore to Miami it was in the possession of this respondent as sole individual common carrier.

And this respondent further shows that its customary course of business as herein set forth in not novel or peculiar to it as a water carrier, but is the general custom and method of doing business of a similar nature which has been in effect for many years and has been practiced by this and other water carriers generally, prior to and since the passage of the Interstate Commerce Act and has never been considered to bring the water carriers within the spirit or letter of the said Act or any amendment thereof.

3. Answering the third paragraph of said petition this respondent says that it has at no time been engaged in transportation in interstate commerce partly by railroad and partly by water under a common arrangement for continuous carriage and shipment and, therefore, expressly denies that it is or ever has been its duty to file any schedules, tariffs or rates with the Interstate Commerce Commission under Section 6 of the Act to Regulate Commerce as amended, or under any other law applicable thereto.

4. Answering the fourth paragraph of said petition this respondent admits that it has never filed tariffs or schedules or rates of charges with the Interstate Com-

merce Commission and denies that it has ever been formally requested so to do by said Commission.

(17) 5. Answering the fifth paragraph of said petition and the prayers for relief and orders of Court therein requested, this respondent expressly says that it has in no way violated any sections of the Interstate Commerce Act or other laws of the United States properly applicable to it and, therefore, it would be improper to issue a writ of mandamus against it as prayed, and this respondent respectfully prays that said petition shall be dismissed with due allowance for its costs.

W. CALVIN CHESNUT,
IRVING L. EVANS,
FRANK LYON,
Attorneys for Respondent.

State of New York,
County of New York, ss:

Personally appeared Chester B. Kellogg, who, being duly sworn on his oath, deposes and says that he is the Vice President of the Munson Steamship Line, a corporation, the respondent in the aforegoing answer, and also on his oath deposes and says that the several matters and things stated in the aforegoing answer are true in substance and effect to the best of his knowledge, information and belief.

CHESTER B. KELLOGG.

Subscribed and sworn to before me this 23 day of August, 1928.

(Seal) WM. G. PLANDING,
Notary Public.

Notary Public, Nassau County N. Y. Co. Clk's No. 181 N. Y. Co. Reg. No. 9131 Kings Co. Clk's No. 5 Kings Co. Reg. No. 9073. Term Expires March 30, 1929.
No. 55969 Series B.

State of New York,
County of New York, ss.

I, William T. Collins, Clerk of the County of New
(18) York, and also Clerk of the Supreme Court in and for said county,

DO HEREBY CERTIFY, That said Court is a Court of Record, having by law a seal; that Wm. G. Planding whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a NOTARY PUBLIC acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York a certified copy of his appointment and qualification as Notary Public for the County of Nassau with his autograph signature; that as such Notary Public, he was authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments to be used in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 24th day of Aug., 1928.

WILLIAM T. COLLINS,
(Seal of Court) Clerk.

(19) **REPLICATION**

Filed 19th March, 1929.

(Style of Court and Title Omitted.)

Now comes the United States of America, the Petitioner in the above cause and says that it joins issue

upon all allegations in the Respondent's answer which deny the material averments of its petition.

A. W. W. WOODCOCK,
United States Attorney.

(20) **OPINION OF THE COURT.**

Filed 22nd March, 1929.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND.

United States of America,

vs.

The Munson Steamship Line.

Before Judge William C. Coleman and a Jury.

Baltimore, Maryland, March 22, 1929.

The Court: I have given very careful thought to this case. As has been stated, it is a very important one from many aspects. First, I want to give my conclusions with respect to the jurisdictional matter. This Court, in advance of any action by the Interstate Commerce Commission, has jurisdiction to entertain this proceeding under Section 20, Par. 9 of the Code (49 U. S. C. A. Sec. 20 Par. 9). This was decided in the case of United States vs. Union Stock Yards, 226, U. S. 286. It is true that case was an appeal from the Commerce Court, but the jurisdiction of the Commerce Court, having been transferred to the District Courts, I can not distinguish between the jurisdiction which was assumed there, and approved by the Supreme Court, and the jurisdiction which I am asked to assume in the present case. That decision involved a number of points, most of which it is not necessary to mention here. But suffice it to say, with respect to the point now in controversy, that the Commerce Court held that the Junction Company was a common carrier, subject to the Inter-

state Commerce Act, and obliged to file its tariffs as required by statute. That part of the opinion of the Commerce Court was affirmed by the Supreme Court, and the proceeding appears to be a proceeding similar (21) to the one which is brought in the present case, so I would say that that authority seems to bind this Court in the present instance.

(22) VERDICT AND JUDGMENT

Whereupon, for trying the issues aforesaid above joined between the parties aforesaid, it is ordered by the Court that eighteen persons from the panel of petit jurors drawn and returned to the Court here, in accordance with the statute in such case made and provided, be drawn by ballot; and thereupon the eighteen persons being so drawn by ballot and written upon two lists, one of which lists is delivered to the counsel for the respective parties, and the counsel of each of said parties having stricken out three names from the said lists, thereupon the remaining twelve persons being called, come, that is to say: John L. Whitney, Ferdinand B. Focke, John W. Tottle, William F. Hitchens, George M. Hardester, William Eurich, Henry J. Addison, William R. Fox, John W. Graves, who being empannelled and sworn to say the truth in the premises, after hearing the evidence produced on behalf of the plaintiff and the defendant and considering the same, and the instructions of the Court, upon their oath do find for the defendant.

Therefore it is considered by the Court here that said plaintiff (petitioner) take nothing by its said writ, but that it be in mercy for its false complaint, and that the defendant (respondent) go thereof without day, etc.

DOCKET ENTRIES

March 23, 1929. Judgment on verdict nisi.

March 25, 1929. Judgment on verdict absolute in favor of the Defendant.

MEMORANDUM

Verdict was rendered in the above entitled case on the 21st day of March, 1929, and Judgment on the 25th day of March, 1929.

PETITION AND ORDER OF COURT EXTENDING TIME FOR SIGNING BILL OF EXCEPTIONS

(23) Filed 18th April, 1929.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

United States of America,

vs. Law No. 3660.

Munson Steamship Company.

To the Honorable, the Judge of said Court:

The petition of A. W. W. Woodcock, United States Attorney, respectfully represents unto your Honor:

1. That he has been authorized to prosecute an appeal in the above entitled case.

2. That the time for signing bills of exceptions expires on April 20, 1929, under the rules of this Court.

3. That while the bills of exceptions are almost ready, your petitioner's absence at the Circuit Court of Appeals on the 18th of this month will make it doubtful if they can be submitted to counsel for the respondent and approved within the time limit.

Wherefore, your petitioner prays your Honor to extend the time for signing bills of exceptions for a reasonable time.

And as in duty bound, etc.

A. W. W. WOODCOCK,
United States Attorney.

(24) ORDERED by the District Court of the United States for the District of Maryland this 18th day of April, 1929, that the time for signing bills of exceptions in the above entitled case be extended to and including May 20th, 1929.

WILLIAM C. COLEMAN,
United States District Judge.

BILLS OF EXCEPTIONS

(25) Filed 17th May, 1929.

(Style of Court and Title Omitted.)

Be it remembered that in order to sustain the issues in this case the Petitioner offered in evidence the shipping order to the Western Maryland Railway Company, from Charles C. Fischer, York, Pennsylvania, which is designated as Fischer Exhibit No. 1.

The Freight Waybill relating to the same shipment called Fischer Exhibit No. 2.

The Scow Receipt relating to the same shipment called Fischer Exhibit No. 3.

The Delivery Receipt relating to the same shipment called Fischer Exhibit No. 4.

The Straight Bill of Lading of the Munson Steamship Line relating to the same shipment called Fischer Exhibit No. 5.

Copy of a letter from the Munson Steamship Line to C. F. Eckhardt, Agent, Western Maryland Railway, called Fischer Exhibit No. 6.

A letter from Charles C. Fischer to the Munson Steamship Line dated December 10, 1927, relating to the same shipment called Fischer Exhibit No. 7.

A memorandum relating to the same shipment called Fischer Exhibit No. 8.

A notice to the Steamship Agent relating to the same shipment called Fischer Exhibit No. 9.

Mr. Chesnut, Counsel for the Respondent, "Now, we have an agreement, your Honor, between Counsel to expedite the trial by waiving formalities of proof of particular documents, each side desires to offer, making notation of objections on the ground of relevancy as to each document. * * * The defendant objects to the introduction of each and all of these exhibits on the following grounds: (1) As to all of them, the objection (26) is made that they are not admissible in evidence unless the Government proposes to follow up the testimony by showing that there was a common control, management or arrangement for continuous carriage of this shipment between the carriers, and (2) As to the document Fischer No. 1, the further objection is made on the score of relevancy, that it is not prepared by the defendant and the defendant is in no wise a party thereto; as to Fischer No. 2, which appears to be a waybill of the Western Maryland Railway, the further objection is that it is prepared by the Railroad Company, not by the Munson Line, and so far as we know was never even in the possession of the Munson Line; and as to Fischer No. 3, further objection is made that it is a form of receipt for money paid by the Munson Line as freight for the Inland Freight carried by rail to Baltimore, that the receipt is prepared by the Western Maryland Railroad and not by the Munson Line. The same objection is made as to Fischer document No. 4. No objection is made to Fischer No. 5, which is the Munson Steamship Line bill of lading. No objection is made to the copy of the letter from the Munson Line to the Agent of the Western Maryland enclosing the payment of freight. No objection is made to the letter of the shipper, Charles C. Fischer, to the Munson Line, telling us what to do with the freight, and the papers are not complete without the arrival notice, which I would like to supply a copy of.

Mr. Woodcock: I would like to say, just briefly, your Honor, that we think that these papers themselves, are evidence of the method of handling this shipment and the best evidence, so we do not think that we are com-

pelled to follow up anything—that is, that these papers, aside from the manner of their introduction, to which there is no objection, are relevant to show the manner of the shipment.

The Court: I will admit them."

The Petitioner then offered similarly and under the same agreement the papers relating to a shipment from Lancaster, Pennsylvania, by the Lancaster Iron Works, which are called

Lancaster No. 1 (which exhibits and certain
" " 2 others hereinafter referred
" " 3 to are appended at the end
" " 4 of these bills of exceptions).
" " 5
" " 6

to which papers the Respondent similarly objected on the grounds of relevancy, the Court admitting them.

The Petitioner then offered similarly and under the same agreement a series of papers relating to a shipment from the Studebaker Corporation of America, (27) which are described as follows:

Studebaker A-1
" A-2
" A-3
" A-4
" A-5
" A-6

to which counsel for the Respondent similarly objected on the grounds of relevancy, the Court admitting them.

The Petitioner then offered similarly and under the same agreement a series of papers relating to a second shipment by the Studebaker Corporation of America, which are described as follows:

Studebaker B-1
" B-2
" B-3
" B-4

to which counsel for the Respondent similarly objected on the grounds of relevancy, the Court admitting them, however.

The Petitioner then offered similarly and under the same agreement the papers relating to a shipment from Indianapolis, Indiana, by the My Own Company, which are called

My Own No. 1
" " " 2
" " " 3
" " " 4
" " " 5
" " " 6

to which counsel for the Respondent similarly objected on the grounds of relevancy, the Court admitting them.

Thereupon **John M. White**, a witness of lawful age produced on behalf of the Government, having been duly sworn, testified as follows:

That he was an agent of the Baltimore and Ohio Railroad at Locust Point, and had held such position since August, 1920. That he had been with the Baltimore and Ohio Railroad in various capacities since May 4, 1904. That Locust Point is one of the Marine Terminals of the Baltimore and Ohio Railroad. He is familiar with the handling of merchandise received over the Baltimore and Ohio lines and destined to be put on board ship through eight years experience and observa-
(28) tion. He received freight consigned to and which was to be put on the Munson Line steamers for forwarding, and also such freight for forwarding by the Merchants and Miners Company. He stated that through bills of lading were issued by the Baltimore and Ohio Railroad Company from inland points to points reached by the Merchants and Miners Company. He stated that when a shipment, for instance, starts at Cumberland over the Baltimore and Ohio Railroad, with a through bill of lading, with the Merchants and Miners as the connecting and forwarding carrier, destined to Miami, Florida, arrives at Baltimore, the Baltimore and Ohio Railroad would send an arrival notice to the Mer-

chants and Miners, or to whomever the shipment is consigned, whatever line it might be. He stated that an arrival notice is information as to the cargo or shipment that had been received and that it is a written notice on a printed form, the data on it coming from the waybill, and the data on the waybill coming from the shipping order or the bill of lading, the two last mentioned being the same, one a carbon copy of the other. He continued by saying that when a car goes to Locust Point or Curtis Bay the procedure would be the same, the arrival notice being sent to whatever line the shipment is intended for. If it were the Merchants and Miners line for illustration, they would ask for the freight and the Baltimore and Ohio would deliver it to them at the Baltimore and Ohio Piers, or it may be lightered to their piers, and put alongside of the ship if the Merchants and Miners wanted the Baltimore and Ohio to do so, wherever the ship may be. He stated that such merchandise is either held in the car or unloaded on the pier, pending the receipt of instructions from the Merchants and Miners.

The question was then asked:

Where do you get your freight money for your end of the shipment. To the asking of which question the defendant objected, on the ground that the respondent was not connected with shipments via the Merchants and Miners and the Court sustained the objection, not permitting the question to be answered. To which action of the Court in sustaining the objection of the defendant and not permitting the question to be answered, the petitioner then and there excepted, and prays the Court (29) to sign and seal this, the Petitioner's First Bill of Exceptions; which is accordingly done this 17th day of May, 1929.

WILLIAM C. COLEMAN (Seal),
United States District Judge.

THE PETITIONER'S SECOND BILL OF EXCEPTIONS.

Whereupon after the evidence set forth in the Petitioner's First Bill of Exception, which is hereby re-

ferred to and made a part hereof as fully as though incorporated herein at length, the witness stated that sometimes carload shipments were received which were to be placed on the ships of the Munson Steamship Line, and that such a shipment would be handled in the same manner as the witness had described awhile ago. He stated that an arrival notice would be sent to the Munson Line, and that the Railroad Company would then be advised where the stuff should be taken and would take it there. The witness stated that if a shipment, for illustration, started at Cumberland, bound for Miami, Florida, by the Munson Line, he did not make a settlement for the freight charges, nor did he handle that. The collection, however, would be made from the Munson Line.

The witness stated finally that he came here under subpoena from the United States.

CROSS EXAMINATION

The witness stated that he was in charge of the delivery of freight handled by the Baltimore and Ohio Railroad Company at Locust Point; that he had to do with the physical supervision of the unloading of the cars and the making of delivery; that it is at Locust Point that the terminal of the Baltimore and Ohio Railroad connects up with water carriers; that he simply physically delivers at Locust Point any freight that he has for any ship that comes there; that he had nothing to do (30) with the making or not making of joint rates on through transportation, it not being in his province. He stated that the physical unloading of a car and the physical loading of the contents of that car is a thing that is determined by the weight and laws of gravity and natural appliances, and that they are the same irrespective of which boat it is to go into, and that in that sense he means that he pursues the same practice, whether it is for the Merchants and Miners, the Munson Line, the Nelson Line, or the Bull Steamship Company. The witness stated the physical handling of it is about the same and that he lifts the 1,000 pound weight in about the same way, whether it is destined for Florida by the Munson Line, or to Liverpool, by the Cunard Line.

Thereupon **James B. Sweeny**, a witness of lawful age, produced on behalf of the Government, having been duly sworn, testified that he is General Traffic Manager of the Merchants and Miners Transportation Company; that he had come here in answer to a subpoena; that he had been with the Merchants and Miners Company twenty-four years, and in his present position three years. He stated that the Merchants and Miners is a carrier by water, having ships from Baltimore, which go to coastwise ports in the north and in the south. He stated that they received shipments for forwarding by these ships from the railroads handling them on through bills of lading from the railroads, and that the Merchants and Miners files with the Interstate Commerce Commission a schedule of tariffs showing rates. The witness was thereupon shown a photostat, which he stated was a tariff, or what is commonly known as an indices of the various tariffs that the Merchants and Miners Transportation Company files with the Interstate Commerce Commission, which was filed under his name of the Merchants & Miners Transportation Company.

This document was thereupon offered in evidence, but the Respondent objected to it as irrelevant and the Court sustained the objection, to which action of the Court in sustaining the objection of the defendant to the offering of this document, the Petitioner then and there ex-
(31) cepted and prays the Court to sign and seal this, its Second Bill of Exceptions, which is accordingly done this 17th day of May, 1929.

WILLIAM C. COLEMAN (Seal),
United States District Judge.

THE PETITIONER'S THIRD BILL OF EXCEPTIONS

Whereupon after the evidence set forth in the Petitioner's Second Bill of Exceptions, which is hereby referred to and made a part hereof as fully as though incorporated herein at length, the petitioner closed its case.

And thereupon there was produced on behalf of the Respondent, **Walter P. Coria**, a witness of lawful age, who having been duly sworn testified that he had been the Manager in Baltimore for the Munson Line for its business out of Baltimore for ten years, before which time he was connected with the Merchants and Miners Transportation Company for thirty-nine years in the shipping business, having thus been in the shipping business, carriage of goods by water, marine transportation, for nearly fifty years, being a little over sixty years of age at present.

He stated that the Munson Line operates out of Baltimore, a regular line to Florida and Cuba, using two ships. It has another regular line service to the Pacific Coast, that line using nine ships. It has other ships, another line to Venezuela, and ships going to the West Indies and other foreign countries. All of these named by him going out of the Port of Baltimore. That he has two ships, the "Munlisto" and the "Munloyal," making regular fortnight trips from Baltimore to Florida Ports. The Munson Steamship Line does not file with the Interstate Commerce Commission any joint rates for through shipments from inland points through Baltimore to Florida points, and has never done so. It has no arrangement or agreement whatsoever with any (32) of the rail carriers as to transporting goods partly by rail and partly by water, and that he has never had any such arrangement for the Baltimore Line during his existence. The Munson Line takes freight from rail carriers as they deliver it on their local billings from the interior points to their terminals, Curtis Bay or Fleet Street, where its steamers load. That the Munson Line has never had any arrangement or agreement with the rail carriers for any division of a through rate, or through charges for freight from inland points to Florida points, the water carriage being by these lines. He stated that he was familiar with the customs and usages of transportation practices relating to bills of lading and way bills and things of that kind. The Munson Line takes freight at Baltimore, originating in the interior, or in the Port of Baltimore, which comes to the line in various ways, by truck, by rail, and sometimes it is delivered by hand. Freight sometimes comes to the

fine by Schooners and they will get it wherever they can. The line solicits business actively from inland points, having agents in Pittsburgh, Chicago, St. Louis, Rochester and Buffalo, that being the way the line gets its business. A Mr. Shamberger is its solicitor for inland stuff in Baltimore and has been for years.

The witness was then shown a copy of a number of letters purporting to show the practice in soliciting inland freight just prior to the dates of the shipments referred to in the Petitioner's case and which counsel for the Respondent had asked him to compile from his records.

Counsel for the Petitioner objected on the grounds of relevancy and not as to form in which the letters were offered. These letters appear as Defendant's Exhibit No. 1, but the Court permitted the introduction of these letters as evidence over the Petitioner's objection, to which action of the Court in permitting the introduction of the said letters in evidence, the Petitioner then and (33) there excepted and prays the Court to sign and seal this, its Third Bill of Exceptions, which is accordingly done this 17th day of May, 1929.

WILLIAM C. COLEMAN (Seal),
United States District Judge.

The letters just referred to are as follows:

DEFENDANT'S EXHIBIT NO. 1

"MUNSON STEAMSHIP LINE

Baltimore, Maryland, August 8th, 1927.

Mr. L. Weber,
The Phillips Glass Company,
1635 Central Ave.,
Cincinnati, Ohio.

Dear Sir:

Replying to yours of the 4th inst. We have regular fortnightly sailings from Baltimore to Miami, which is

the nearest point to Miami Beach. Our next steamer the SS MUNLEON sails August 11th and will be followed by steamer every two weeks thereafter.

You do not mention what you ship but from the letter head of your letter we assume it is engraved glass on which our rate from Baltimore to Miami would be $1.05 per 100 lbs. carloads, minimum 20,000 lbs. and $1.45 per 100 lbs. less carloads, value not exceeding $30.00 per 100 lbs. When the value exceeds $30.00 per 100 lbs. rate would be $2.17½ carloads and less.

Our steamers load at the Curtis Bay Terminal of the Baltimore and Ohio Railroad and shipments should be routed accordingly marked in care of the Munson Steamship Line.

We thank you for the inquiry and trust you will find it consistant to favor us with a share of your business.

Very truly yours,

MUNSON STEAMSHIP LINE,
Local Manager."

(34) "THE PHILLIPS GLASS CO.

Cincinnati, Ohio, August 4th, 1927.

Freight Traffic Mgr.,
Munson S. S. Co.,
Baltimore, Md.

Dear Sir:

Please advise by return mail if you can handle a shipment to Miami Beach, Florida, giving us all information necessary for shipping out of Cincinnati, Ohio, best route and rate, and date of sailings.

Your prompt attention to this will oblige,

Yours truly,

THE PHILLIPS GLASS CO.,
Per L. WEBER."

"MUNSON STEAMSHIP LINE

Baltimore, Maryland, November 3rd, 1927.

Messrs. A. K. Zinn & Company,
Battle Creek, Michigan.

Gentlemen:

This will confirm our wire of today wherein we advised that rate of 17c per 100 lbs. our dock delivery Jacksonville would apply on shipments of feed and best pulp from Curtis Bay, Baltimore to Jacksonville. While this rate is very thin, nevertheless we will arrange to protect same covering your shipments.

In this connection may we ask when the movement of 800 tons feed which you booked with us for Miami will commence to come forward.

Very truly yours,

MUNSON STEAMSHIP LINE,
Local Manager."

"MUNSON STEAMSHIP LINE

(35) Baltimore, Maryland, November 11th, 1927.

The Cass Seed Grain Company,
Saginaw, Michigan.

Gentlemen:

We are advised by our Miami Office that the Naff Hoskins Company of that city have placed order with your good selves for carload of dried beans, requesting that same be routed via our line.

This therefore is to advise that our steamers sail from here for Miami, Fla., every fortnight our next steamer being the SS MUNLISTO November 17th.

We trust you will find it consistant to favor us with the shipment in which case kindly route care of the Munson Steamship Line, B. & O. RR., Curtis Bay, Balti-

more, advising date shipment leaves your plant, also car number and intitial and we will trace from this end to avoid any delay.

Very truly yours,

MUNSON STEAMSHIP LINE,
MF Local Manager."
CC Freight Traffic Department, NYC.

"MUNSON STEAMSHIP LINE

November 15th, 27.

Mr. J. T. Preston, T. M.,
Chamber of Commerce Bldg.,
Roanoke, Va.

Dear Sir:

Answering your favor of the 14th inst. Our present rate on earth paint in barrels and bags, this city to Jacksonville, Florida, will be 29½c per 100 lbs. any quantity and to Miami, Florida, 45c carloads and 55c less carloads, minimum carload weight 36,000 lbs.

Our steamers load at the Curtis Bay Terminal of the Baltimore and Ohio R. R. and sail from there every other Thursday, the next sailing being the SS MUNLISTO, November 17th. Shipments routed via the Baltimore & Ohio R. R., care of the Munson Line, Curtis Bay, come direct to ship's side without additional switching or handling charges.

(36) We are advised by the Baltimore & Ohio R. R., their rate from Muirkirk, Md., to Curtis Bay will be on paint packed in barrels 9½c carloads and 16c less carloads, same packed in bags, will be 21½c less carloads, minimum carload weight 36,000 lbs.

Thanking you for the inquiry and trusting you will favor us with a share of your business, we are,

Very truly yours,

MUNSON STEAMSHIP LINE,
CC to Local Manager."
Mr. George Schamberger, Jr.

"J. T. PRESTON

Traffic Manager,

Roanoke, Va., Nov. 14, 1927.

Munson Steamship Line,
Keyser Bldg.,
Baltimore, Maryland.

Dear Sirs:

Please quote your lowest rates on dry earth paint in barrels, and in bags from Baltimore, Md., to Jacksonville and Miami, Fla., to apply on shipments originating on the B. & O. at Muirkirk, Md. If there is additional charge at Locust Point for effecting transfer from the B. & O. there will you please quote those figures also.

Yours very truly,

(Signed) J. T. PRESTON,
Traffic Manager."

"MUNSON STEAMSHIP LINE

(37) Baltimore, Maryland, September 21st, 7.

Mr. R. K. Shakespeare,
John S. McDaniel & Co.,
Easton, Md.

Dear Sir:

Answering yours of the 20th inst. This will confirm rate of 22½c per 100 lbs. on canned vegetables, this city to Jacksonville, Fla., quoted you by our Mr. Schamberger and also advise that our steamers load at the Curtis Bay Terminal of the Baltimore and Ohio Railroad where your shipments will be received by schooner or otherwise at pier. We will accept the goods on dock as delivered from vessel. The goods can be delivered at any time excepting Saturday afternoons, Sundays or holi-

days. If you will give us a little advance notice it will facilitate matters in arranging to have the necessary help to assist in receiving the freight but goods may be delivered, as above advised on any working day at the convenience of the vessel.

Very truly yours,

MUNSON STEAMSHIP LINE,
Local Manager."

MF
CC
Mr. Shamberger.

"JOHN S. McDANIEL & CO.

Easton, Md. 9/20/27.

Munson Steamship Line,
Keyser Building,
Baltimore, Maryland.

Gentlemen:

After your Mr. George Schamberger, Jr., left our office this morning, we had a question arise which we would like to have you advise us on.

We understand your rate from Baltimore to Jacksonville, is 22½c per cwt., and that your vessels load at the B. & O. Please advise by return mail if you have facilities for taking care of Canned Goods which might be delivered by schooner for shipment by your line, and could such deliveries be made by schooner to you any time between your sailings, as oft times we would have no control over the sailing and arriving of schooners.

Yours very truly,

JOHN S. McDANIEL & CO., INC.,
R. K. SHAKESPEARE."

"MUNSON STEAMSHIP LINE

(38) Baltimore, Maryland, Sept. 2nd, 1927

Mr. L. F. Shepard, T. M.,
Anchor Post Fence Company,
Garwood, N. J.

Dear Sir:

Replying to yours of the 1st inst. Our rate on Woven Wire Fencing in rolls, Iron Fence Posts & Fittings, Iron Stretcher Bars and Gates (Iron and Wire combined) would be as follows:

Curtis Bay Baltimore to Jacksonville, Fla., 28c per 100 lbs. less carloads and 21½c carloads.

Curtis Bay Baltimore to Miami, Fla., 49½c per 100 lbs. less carloads and 31c carloads, minimum carload weight 36,000 lbs.

The rate on steel nose trucks would be Curtis Bay Baltimore to Jacksonville, Fla., 88½c per 100 lbs. less carloads and 29½c carloads.

Curtis Bay, Baltimore to Miami, Fla., $1.05 per 100 lbs. less carloads and 70c carloads, minimum, 24,000 lbs.

Our steamers load at the Curtis Bay Terminal of the Baltimore and Ohio Railroad and sail from these every fortnight our next steamer being the SS MUNLEON September 8th and shipments should be routed accordingly marked in care of the Munson Steamship Line.

Thanking you for the inquiry and trusting to be favored with a share of your business.

Very truly yours,

MUNSON STEAMSHIP LINE,
Local Manager."

"ANCHOR POST FENCE COMPANY

Garwood, N. J., September 1, 1927.

Munson Steamship Line,
Keyser Building,
Baltimore, Md.

Gentlemen:

Please quote carload and less carload rates on the following commodities from Baltimore to Miami, Fla., (39) and Jacksonville, Fla.:

Woven Wire Fencing in Rolls
Iron Fence Posts & Fittings
Iron Stretcher Bars
Gates, (Iron & Wire combined)
Steel Nose Trucks.

Also furnish schedule showing sailing dates.

Yours very truly,

ANCHOR POST FENCE COMPANY,
L. F. SHEPARD,
Traffic Manager."

"MUNSON STEAMSHIP LINE

September 20th, 1927.

John S. McDaniel & Co.,
Easton, Md.

Gentlemen:

Following our phone conversation of even date, would advise that the carload rate on canned goods from Irvington, Va., to Baltimore, Md., Curtis Bay Merchandise Pier, is 22c per 100 lbs. Ocean rate from Baltimore to Miami, Fla., carload is 32½c per 100 lbs.

Our S. S. MUNLISTO is scheduled to sail Thursday, September 22, and is followed by a steamer on October 6th.

Trusting the rates and sailings as above will meet your requirements and that we will be favored with your future business, we are,

Very truly yours,

MUNSON STEAMSHIP LINE,
Local Manager."

THE PETITIONER'S FOURTH BILL OF EXCEPTIONS

(40).

Whereupon after the evidence set forth in the Petitioner's Third Bill of Exceptions, which is hereby referred to and made a part hereof as fully as though incorporated herein at length, the witness continuing stated that he never said to the shippers that they can send a shipment to Florida on a through bill of lading, and as a matter of fact the line did not accept and transport merchandise on through bills of lading. It issues its own bill of lading at the port for the shipment when it receives it and rails that bill of lading to the shipper or the consignee as he may direct. He stated that the Munson line did not have anybody arrange with the shipper when he makes a shipment to it by mail from an inland point as to what the shipper should do as to making up his bill of lading. The shipper is told as in the letters offered in evidence by the defendant.

The shipper in turn starts his shipment to the railroad station and takes his bill of lading which later he sends to the line and with that bill of lading is his letter to the line which is the letter to the witness to send that shipment of freight to Miami, Jacksonville, Venzeula or San. Francisco, or wherever the shipper wants it to go. If the letter of instructions is contrary to the indications on the bill of lading, which may contain such notations as has been seen in this case as, for instance, "Charles C. Fischer, Miami, Florida," the line obeys his order strictly.

In the case of the shipment by the My Own Company, which was consigned at Baltimore to the Van Camp Products Company, when there was a letter to the line authorizing and directing to ship it to somebody else,

the letter was followed strictly, that is the line recognizes the man as the owner of the goods and his instructions are implicitly followed.

(41) When the goods come here and the Line is notified by the railroad that they have arrived, and when its ship is ready to go in berth to load the cargo, the line prepares for the railroad what is known as a cargo list of such freight as it wishes the railroad to deliver for that steamer, giving the railroad the name of the steamer and the date she is scheduled to sail, and after the railroad delivers the freight the Line receives it, puts it on board and receipts to the railroad for delivery. The Line does all stevedoring, its own organization does it, and at its own expense.

The freight charges are rendered to the Line at different intervals. There are two weeks between the sailings of these ships and it may be, pending the arrival of the ship, the bills are sent into it, periodically, maybe two or three times a week, that is by the railroads. Then those bills are kept in the file until such times as the Line's manifests are complete, then the Line usually collects them together and sends the railroad a check for the amount of the total. Sometimes the bills are way behind the sailing of the ship in the rendering of them and the Line has to get information by telephone or otherwise from the railroad in reference to the charges, that is it must get the bills from the railroad showing the amount of the charges by the railroads.

The Line does not defer making payment of the railroad freight charges until it has collected the charges itself from the consignee. It does not know anything about the collection of charges at the other end. It pays the railroad company for its own account, the railroad company looking to the line for the payment, and the line pays the railroad as soon as it can balance the charges. The line pays such charges for itself—that is, for the service the railroad company has rendered to the
(42) line. It is given the freight, the freight is consigned to its care and the railroad looks to it for payment of the freight and consequently the line is indebted to the railroad for the charges. Such payment made by the line is charged to the shipper. The line pays for his account and collects from the fellow at the other

end when the goods are delivered. It does make the payment for the account of the shipper before collecting from the ultimate consignee and does make that payment irrespective of whether it collects. In each case the line has a letter of instructions from the shipper what to do with the shipment from Baltimore and in every case it issues its own bill of lading—that is, an ocean bill of lading is issued. That bill of lading goes to the shipper unless, he directs the line to send it to the consignee, or some middleman he is selling his goods to. The line obeys the orders of the shipper.

The witness stated that he knew the difference between the through bill of lading and the local, and stated that the bill of lading in the Fischer case is a local bill of lading, the contract terminating at the Port of Baltimore, because the shipment is consigned to Charles C. Fischer, care of Munson Steamship Line, destination Baltimore, Maryland.

"Q. Now, then, this particular bill of lading has a notation in the box, or space under the title of description of articles, special marks and exceptions, in parenthesis, "For Charles C. Fischer, Miami, Florida?" A. Yes, sir.

Q. From the customs of the business, what will you say is the effect of that notation? A. That would indicate to me it is the marks on the goods. These bags were probably tagged "Charles C. Fisher, Miami, Florida."

(43) Q. And it serves also, I suppose, as an indication and a memorandum in the file that these particular goods were handled on this particular bill of lading? A. It does.

Q. It further identifies the goods, doesn't it? A. Identifies the goods, yes, sir.

Q. Has, from the custom of the business, this notation on here of Charles C. Fischer, any relation to the place of ultimate destination under this bill of lading. A. Not from that bill of lading. There would be a letter which would accompany that to us, directing us where to forward that freight."

To the permitting of the asking of the last question and the answering thereof by the witness, counsel for the

Petitioner objected, but the Court overruled the objection and permitted the question and answer, to which action of the Court the Petitioner then and there excepted, and prays the Court to sign and seal, this, its Fourth Bill of Exception, which is accordingly done this 17th day of May, 1929.

WILLIAM C. COLEMAN (Seal),
United States District Judge.

THE PETITIONER'S FIFTH BILL OF EXCEPTIONS.

Whereupon after the evidence set forth in the Petitioner's Fourth Bill of Exceptions, which is hereby referred to and made a part hereof as fully as though incorporated herein at length, the witness continued that Mr. Fischer's letter of December 10, 1927, Government Exhibit Fischer 27 told the line what to do with their shipment.

"Enclosed you will find freight bill covering shipment of 446 bags manure mixture via W. M. R. R. This (44) material is to be delivered to Charles C. Fischer, Miami, Florida."

If the letter had said, "Send it to John Smith, Jacksonville, Florida, or to Pedro Cabelleroes, Havana, Cuba," it would have gone to John Smith, Jacksonville, Florida, or to the man in Havana. If there was any question about the name, the line would have taken that up further with the shipper to find out what he wanted.

The bills of lading offered in evidence are what the line calls straight bills of lading as distinguished from order bills of lading. The difference between the two is that when a shipment moves on a straight bill of lading, the railroad does not require the surrender of that bill of lading to it before the delivery of the freight, but an order bill of lading must be properly endorsed by the shipper and turned over to the railroad before it will deliver the freight.

In the Studebaker shipments the witness believes they were order bills of lading. If there are order bills of lading from the shipper, one cannot get the goods from

the Railroad Company without surrendering the bills of lading to it.

In every case whether it is a straight bill of lading or an order bill of lading, the line issues its ocean bill of lading from Baltimore on.

The witness knows nothing as to the issuing of the bill of lading, gave no instructions whatever to the shipper or the clerk, or whoever wrote it. He believes that the shipper sends it to the line more in support of the letter to sends the goods forward to Miami, Florida.

If it is an order bill of lading the shipper must send it here so that the line may get the goods.

The line has nothing to do with waybill Fischer No. 2, which is a railroad interior paper and has to do with their own operation never going into the Munson Line's hands at all.

The Railroad makes out a freight bill such as is shown (45) in Fischer No. 3, and sends it to the line which stamps it. The Line's stamp does not happen to be on the back of this bill. It is customary for the line to stamp the back of these bills the day it receives them, but this bill, apparently, bears the stamp of the Cottman Company, December 19, and the witness thinks it probably went to their office by mistake and later on they delivered it to the line. The line had nothing to do with the making out of this particular freight bill. The witness presumes that this bill was made up by the Port Covington Office of the Western Maryland Railway.

The Munson Line bill of lading is made in the line's office. The Line pays the freight and sends it to the agent of the Western Maryland. The witness does not know the date the steamer arrived at Miami.

The Respondent then offered without objection defendant's Exhibit No. 2, which is a tabulation of data regarding the various shipments, and is hereafter attached.

The witness continued and stated that the tabulation shows that the Fischer shipment was received on December 12, 1927, and the freight bill received on December 14, 1927. The freight was paid by the line on December 21, 1927. The amount paid to the Western Maryland was $43.76, the freight was collected from

the man at Miami on December 27, and the shipment was delivered to the consignee on December 28. The witness stated that the freight bill was paid on December 21, six days before it was collected in Florida. The witness stated that the box on the bill of lading headed "Description of Articles" is used for various purposes, describing the freight, showing the marks and numbers, and giving such little instructions as may be interpreted from that form there. It is used on local shipments and interior shipments. The line gets them from all over the country. The custom is universal. That space is always used for that purpose.

Q. After you get this arrival notice from the rail-
(46) road, do you know how much free time you have at Baltimore before you have to take the goods from the railroad or before their liability as a common carrier ceases? A. I think it is forty-eight hours."

Witness also referred to the shipment by the "My Own Company" which by letter to the Munson Line was redirected and consigned to Lewis-Chitty, which he said could not have been done if the original railroad bill of lading to Baltimore had been a "through" bill of lading; and also said this particular shipment illustrated the practice of the line in following the instructions of its shippers given to the Line at Baltimore by letter.

Witness also said that the method of handling inland freight coming to the Port of Baltimore for water shipment, consigned to the Munson Line as agent of the shipper, was a practice not peculiar to the Munson Line, but was the same with all the lines that operate from Baltimore, whether to Europe, South America, the Pacific Coast, Cuba or anywhere else. "We all do business in the same way"; and the witness further said that traffic out of Baltimore by water for Atlantic Ports—was called "coastwise" and for Pacific ports was called "Intercoastal."

CROSS EXAMINATION

By Mr. Woodcock:

Q. Mr. Coria—was the name Coria? A. That is
(47) correct.

Q. You have emphasized somewhat that you obey the instructions on the letter rather than the notation on the bill of lading? A. Yes, sir.

Q. And your counsel has pointed out particularly this My Own Company shipment where you followed the instructions in the letter rather than on the bill of lading. Now, of course, if there had been a through bill of lading the holder of that bill of lading could have reshipped the goods or changed the destination just as well, couldn't he? A. Well, if it is moving on a through bill of lading—of course, we would not recognize a through bill of lading.

Q. Pardon me, I said, if a through bill of lading has been issued, conceivably issued, from the My Own Company, through your Munson Line, the holder of that bill of lading could still have changed his mind as to the destination or the consignee, couldn't he? A. We would not permit that bill of lading to go through. We would stop it.

Q. I do not want to take up the time and, perhaps, (48) I might not be making the question clear. But you do not mean to say that this is the only way goods may be shipped—that is on a new bill of lading given by you—where the shipper or the holder of the bill of lading can change the destination. A. We issue an ocean bill of lading for every shipment that we receive.

Q. Oh, no, pardon me. I cannot make you understand. It is my fault, not yours.

Mr. Chesnut: I do not want to have any unnecessary issues about the law. It is my understanding of the transportation law that the holder of a through bill of lading by railroad can change the ultimate destination under certain circumstances, but he would give the orders there to the carrier issuing the bill of lading, not to some connecting carrier. I think that is the law.

Mr. Woodcock: Do you admit that to be true, what your counsel has just stated?

A. A change of that kind would be made by the railroad, not by my office.

Q. Well, anyway, the holder of a through bill of

lading can change the consignee or the destination, can't he? A. I presume he can, with a through rail line.

Q. And he doesn't have to give that order, as Mr. Chesnut just suggested, to the initial carrier, he can give it to any carrier where he finds the goods, can't he? A. I won't say he can, no sir.

Q. You wont say he can not? A. Not on a through bill of lading with us, No.

Q. I thought you didn't issue any through bill of (49) lading? A. We do not, we do not, but that bill of lading that you have illustrated would be changed by the railroad before we got the goods.

Q. Then there is nothing unique in that respect in your method of shipping goods, that the shipper can change the destination. A. If his instructions came to us to make the destination of that freight different from what the railroad shows, why, we would bill it wherever he directs.

Q. And you would do the same thing if a through bill of lading had been issued, wouldn't you?

Mr. Chesnut: His answer was he did not take them.

A. We do not work on a through bill of lading.

Q. (By Mr. Woodcock) You made a statement—I think one of the last statements you made—that all carriers do business the same way—that is, the way you do business? A. All the ocean carriers.

Q. How about Coastal carriers? A. Why, they would have through rates and arrangements with the rail lines and their business would be different than ours.

Q. Then you do concede that there are coastal carriers operating from Baltimore which do issue through bills of lading for shipments received by them by rail? A. I presume they work on the through bill of lading issued at the initial point.

Q. The point is, you say you do not issue through bills of lading? A. No, we do not.

Q. But there are competitors of yours that do issue through bills of lading? A. Yes, the Merchants & (50) Miners issue through bills of lading.

Q. I want that clear. So all of these companies do

not do business in the same way? A. All the ocean carriers do business the same way.

Q. We are not talking about ocean carriers in this case, are we? A. Well, we are. I presume we are talking about the boat lines here doing business.

Q. Do you consider your business from here to Miami an ocean business? A. Yes, coastwise ocean.

Q. Then all ocean carriers from Baltimore to Miami do not do business in the same way that you do. A. No, they do not.

Q. I thought your statement in your direct examination was that they all do business in the same way *way* not accurate and it was not, was it?

Mr. Chesnut: You are using the terms in a different sense.

Q. (By Mr. Woodcock) Well, put it this way: Your method of handling business, you say, is different from that of the Merchant & Miners?

Mr. Chesnut: With respect to the bill of lading?

A. Yes, sir.

Q. (By Mr. Woodcock) How does it differ? A. Well, we are doing a business from port to port strictly. They are doing a through business as well as a port to port business.

Q. Well, in each case the ship stops at Baltimore and receives the freight from the railroad, doesn't it? A. Yes.

Q. That is true? A. Yes.

Q. The railroad puts it on a lighter or scow or something and brings it down to the side of your ship? A. (51) We take the freight right at the dock under the ship's tackle.

Q. The railroad takes it to the dock? A. To the pier.

Q. That is the Baltimore & Ohio Railroad Pier, merchandise pier, where your dock your ship? A. Curtis Bay at that time, but not now.

Q. And the consignee pays the freight when he receives the goods from your Company, doesn't he? You

deliver the goods to Miami and the consignee pays the freight? A. He pays the total charge, whatever it is.

Q. He pays the total charge? A. Yes.

Q. From York down to Miami, pays it all, doesn't he? A. He pays the bill, yes, sir. That is what we collect.

Q. He does the same thing if he shipped by the Merchants and Miners, doesn't he? A. I presume he does.

Q. Certainly, certainly. Well, then, is there any difference except that you issue this distinct blue piece of paper to him—isn't that the only difference? A. Well, no, it is not the only difference.

Q. Well, what is the difference then? A. The Merchants & Miners by filing their rates with the Commission, and working in connection with the railroads, can issue a through bill of lading from point of shipment to destination, and those rates divide differently from what ours do. We pay the local rate from the initial point to the port of Baltimore, and then we charge the consignee the ocean rate from Baltimore to Miami. Now, the other line is working under a through billing arrangement and how that rate divides I do not know. I presume it is prorated on mileage.

Q. The railroad gets a part of whatever is paid into (52) the Merchants & Miners, just as it does in your case.

Mr. Chesnut: But it doesn't get the same part?

A. They get part of the revenue, sure, but how it divides I do not know.

Q. (By Mr. Woodcock) You do not file any rates? A. No, sir, our rates are not filed.

Q. There is nothing to prevent your solicitors from quoting one rate to Tom Jones in York and another rate to Jim Smith in York?

Mr. Chesnut: I object to that, because it seeks to inject an element into the case which is not properly here. The question of rates is not in this case. There is nothing even in the Act which undertakes to say that water carriers must have the same rates. It is simply a question of whether they have to file any rates. So

that the reasonableness of the charges is not an element in the case at all. Of course, Colonel Woodcock can argue, if he wishes to, as a matter of argument but not of evidence, that if we are not compelled to file rates we are not hampered by rates.

Mr. Woodcock: I concede the question was more argument than a question. I do not insist upon it.

Q. Your letters of solicitation of business do frequently refer to the railroad rates, don't they? A. Yes. We would ask the railroad, for instance, what their rate would be on a certain commodity from York, Pennsylvania, to Baltimore, if the shipper wanted that information, and in our letter we would tell him what the railroad has named on that commodity to Baltimore.

Q. Of course, you would. In other words, you give the shipper all the information that he needs by which he may ship his goods from York, say to Miami, including the railroad part of the freight, you tell him (53) what that would be? A. We would do what we could to assist him to get his freight through to the correct destination, tell him how to mark it and all that and so forth.

Q. Again seeking to get at this matter of doing business, you can tell a shipper in York, Pennsylvania, then, just exactly what the Merchants & Miners can tell him, can't you. A. No.

Mr. Chesnut: I object to that.

Q. (By Mr. Woodcock) You can tell him what it would cost his to ship his goods from York to Miami? A. The Merchants & Miners can tell him he can ship his goods on a railroad bill of lading and get his money for his goods in York, Pennsylvania, but the Munson Steamship Line can not tell him that.

Q. You can tell him how much it will cost him to ship his goods, can't you? A. Approximately, yes. I do not guarantee those rates.

Q. Now, let us see. Here is a letter you presented a moment ago to Mr. J. T. Preston, Chamber of Commerce Building, Roanoke, Virginia? A. That is right.

Q. November 15, 1927? A. That is right.

Q. It is one of the group that was offered here. A.

Yes, sir: "We are advised by the Baltimore & Ohio Railroad their rate from Muirhirk, Maryland, to Curtis Bay will be—

Q. Do you want to hold the letter? A. I guess I can read it better if I do.

Q. Read that. A. "We are advised by the Balti-
(54) more & Ohio Railroad their rate from Muirhirk, Maryland, to Curtis Bay will be on paint packed in barrels 9½ cents carloads and 16 cents less carloads, same packed in bags, will be 21½ cents less carloads, minimum carload weight 36,000 pounds. Thanking you for the inquiry and trusting you will favor us with a share of your business, we are."

Q. You have read next to the last paragraph. The first paragraph is: "Answering your favor of the 14th instant, our present rate on earth paint in barrels and bags, this city to Jacksonville, Florida, will be 29½ cents per 100 pounds any quantity and to Miami, Florida, 45 cents carloads and 55 cents less carloads, minimum carload weight, 36,000 pounds." You, as an operator of boats are not interested in carloads. A. We make a minimum quantity in weight. That is why we speak of it as that unit.

Q. "Our steamers load at the Curtis Bay Terminal of the Baltimore & Ohio Railroad and sail from there every other Thursday, the next sailing being the S. S. MUNLISTO November 17th. Shipments routed via the Baltimore & Ohio Railroad, care of the Munson Line, Curtis Bay, come direct to ship's side without additional switching or handling charges." A. That is right.

Q. In other words, the recipient of that letter would have everything which would enable him to ship by your line to Miami? A. Yes.

Q. Freight rate and everything? A. Yes.

Q. Now, do I understand that you have solicitors
(55) out in these inland cities? A. We have agents in Pittsburgh, Chicago, St. Louis, Buffalo. We have a solicitor that goes out from my office, Mr. Schamberger, who is soliciting this freight in the interior.

Q. A solicitor, to my mind, means some one who goes out and asks the shipper to ship by the Munson Line rather than some other line? A. That is Mr. Schamberger, from Baltimore.

Q. He actually goes around and interviews the shippers? A. Has a personal contact with the shipper.

Q. Now, again, if we are talking about Miami, Mr. Schamberger knows exactly what the Merchants & Miners must and can charge because they have got their tariffs on file, doesn't he?

Mr. Chesnut: I object to that.

Mr. Woodcock: Your solicitor—

Mr. Chesnut:—Because it seeks to inject an element that is not in the case.

Mr. Woodcock: I am just leading up to how this solicitation works, by tying it right in with the quotation of these railroad rates. It seems to me these letters having been put in, it is competent to go into them. This is your evidence, Mr. Chesnut?

Mr. Chesnut: I submit that any effort in this case endeavoring to show competition, if you please, between the Merchants & Miners and the Munson Line, is quite irrelevant because that is not the question, whether we compete with them; the question is whether we make an arrangement for through traffic with the rail carriers. Now, injecting the element of supposed competition with the Merchants & Miners is quite apart from the case.

The Court: It is quite hard sometimes to divide the (56) two questions, Mr. Chesnut. I think the last question is proper and I will admit it.

(Question repeated to the witness)

A. Oh, he can ascertain what their rate is, but I do not say he knows what the rate is. He doesn't carry those tariffs, or anything of that kind, but it is possible to get those rates from the Merchants & Miners.

Q. (By Mr. Woodcock) And when he goes to a shipper he is always able, if he wishes to, to quote a lower rate by your line than by the Merchants & Miners? A. He will quote whatever rates we give him to work with.

Q. You mean you quote the rates? A. Yes, we give him our rates.

Q. You give the rate to whoever deals with the shipper. I suppose that he does come back to you for instructions? A. He has the personal contact with the shipper.

A. How do you fix this rate which you quote Mr. Preston here of 29½ cents per hundred any quantity to Miami, Florida. How do you arrive at that figure?

Mr. Chesnut: I object again, your Honor. The question of what rates were charged is certainly not in the case, or how we fix that rate, or anything of that kind. Under the Shipping Board Act, the Shipping Act, all companies, all shipping companies, have to file certain maximum rates. Those are not minimum rates, they are maximum rates, but outside of that, there is no law of the United States that requires water carriers to file any rates other than the one we are talking about. So that it is not a question in this case of the rates, or whether they are reasonable or higher than the Merchants & Miners or lower than the Merchants & Miners. That is not the question. I think continual harping on that does not seek to give a wrong impression to the jury of the case.

Mr. Woodcock: It certainly does go to the very heart (57) of the controversy as to why the Interstate Commerce Commission is seeking to apply this law, may it please the Court, and, furthermore, it furnishes a motive in explanation of this peculiar method of doing business.

Mr. Chesnut: Now, Colonel, is it peculiar?

Mr. Woodcock: Well, I think so.

Mr. Chesnut: There is certainly no evidence that it is peculiar.

The Court: I think it is probably admissible on the question as to whether it has any indication of an arrangement, a through arrangement as distinct from whether it is reasonable or discriminatory. I will admit it on the ground that it may have some bearing on

the question as to whether there is in fact any arrangement or through agreement.

Mr. Chesnut: May I note an exception to that, because it may have some other aspect.

Q. (By Mr. Woodcock) Do you have anywhere the letter that was written to this shipper, Mr. Fischer, up at York, Pennsylvania, when you got this business? A. I think the copy of that letter is in the file.

Q. What? A. I think it is in the file.

Q. I know you have his letter to you, but I was wondering if you wrote him any letter? A. No, I have no recollection of ever writing him at all.

Q. Do you know how he knew that you would ship his fertilizer to Miami? A. No. He may have gotten a line on our service from his Miami office. We get many shipments without solicitation—the freight comes to us.

Q. How did Mr. Fischer know that he could start (58) a carload of fertilizer at York, Pennsylvania, and have it wind up at Miami by your Munson Line? A. I can not answer that.

Q. And how did he know that it was desirable, or certainly helpful, for him to put "For Charles C. Fischer, Miami, Florida," in this box of the bill of lading? A. He didn't get that information from my office, but it is possible he got it from the Miami office.

Q. You think that somebody from the Munson Line must have told Mr. Fischer how to do this? A. It may have been. I can not say until I talk to Mr. Fischer.

Q. Of course, you can't. How long had this custom been in vogue. A. Oh, we have been in the business—I have been there ten years and we started our intercoastal line back in—wait a minute, I will give you the date—our intercoastal service was started September 27, 1922, and that has been our custom from the time we started.

Q. Then it is generally known that a shipper may do this thing, may start his freight by the railroad and mark on it, "For Charles G. Fischer, Miami, Florida, by the Munson Line," and that carload will go to Miami. That is generally known, isn't it? A. No. He must send us a letter of instructions.

Q. I will admit that he must send you a letter of instructions. That fact is generally known then? A. That is known, then. That is correct.

Q. It is generally known that he can do business that way. Now, do you mean this was the only shipment for Fischer that you carried? A. Oh, I don't think so, now I think we carried more than that.

(59) Q. There must be some correspondence with him, must there not, giving him the rates and so forth. A. The correspondence would be attached to every shipment that moved pertaining to that lot.

Q. How would Mr. Fischer know what the rate was? A. Well, now, I can not say until I talk with Mr. Fischer where it ever came from. I can not find anything in our file about it.

Q. (Mr. Chesnut): How could Mr. Fischer have found out what your rate was?

Mr. Woodcock: How could Mr. Fischer have found out what your rate was—in what different ways could he have found it out? A. He could get the rate through our Miami Office, our New York Office and our Baltimore Office.

Q. (By Mr. Chesnut): Is there a telephone from York to Baltimore? A. Oh, yes, he could get it by telephone or by correspondence or by contact with our agent,

Q. (By Mr. Woodcock): I beg your pardon. A. He could get it by contact with our agent, if he interviewed him. I do not know that he did interview him, but he may have.

Q. (By Mr. Woodcock): But there is no place where he could go to find these rates, is there? No place where they are on file? A. No, sir, excepting in the Munson Line office.

Q. I want to leave this phase of it. It is a fact, of general knowledge among your shippers, that this is the way they can get a continuous shipment through?

Mr. Chesnut: I object to that, sir. That is a question of law.

Mr. Woodcock: It is on cross-examination?

(60) Mr. Chesnut: The form is all right, but it is a question of law. You are using the word "continuous." Do you mean that in the physical sense?

Mr. Woodcock: Limit it to the physical sense then. I will reframe the question, if the Court will permit.

The Court: Yes.

Mr. Woodcock: Then it is generally known that your shippers can get a continuous shipment from an inland port to Florida, continuous in the physical sense, by this method.

Mr. Chesnut: I object to that because it is immaterial.

The Court: Objection overruled.

Mr. Chesnut: Exception noted.

A. Well, they know they can get the freight through to Florida over the Munson Line by shipping it locally to the port and advising my office where we are to reconsign it, if they want it to go to Miami or to some other place in Florida.

Q. That is all they have to do? A. That is all that is necessary to do, yes.

Q. Now, I notice this Fischer shipment—you have it on here—according to this schedule, the Munson Line received it on the 12th of December and you didn't pay the railroad company the $43.76 until the 21st of December. That is a matter of nine days, isn't it? A. Yes. We did not get the bill, though, I think, until the 14th of December. That would be a matter of seven days from the day we got the bill.

Q. Then you waited seven days?

Mr. Chesnut: No, no, Colonel. We paid when we got the bill.

Mr. Woodcock: If you got the bill on the 14th and paid it on the 21st, then you waited seven days? A. I think the ship sailed—what was the date of her sailing, the 12th?

(61) Mr. Chesnut: The 15th.

Mr. Woodcock: You got the freight on the 12th, you received the freight bill on the 14th and you paid it on the 21st? A. The ship sailed on the 15th.

Q. Well? A. We would not pay the bills until we had checked them with the outward manifest, which would be between the 15th and 21st. Now, Sunday may have intervened there, or there may have been—there were no holidays that I can recall, but there was Sunday and Saturday afternoon.

Q. All I want to establish is the fact that you waited nine days after getting the goods and seven days after getting the bill before you paid it.

Mr. Chesnut: What is the point of that, your Honor?

Mr. Woodcock: I am coming to the point in just a minute. Let me get the fact first?

A. The date is correct.

Q. All right. If you had been just an ordinary consignee in Baltimore City and not the great Munson Steamship Company, and you had had a carload of fertilizer shipped down to you here to put on your farm, how soon after getting that fertilizer would you have had to pay the bill?

Mr. Chesnut: I object to that. Any one who knows the intricacies of the regulations about that knows that there are classifications and that there is no obligation to pay spot cash for merchandise when the railroads know with whom they are dealing. It is a matter of ordinary credit.

The Court: I think that is affected by so many circumstances it is not a fair question.

Q. (By Mr. Woodcock): I ask you if you do not

know the regulation as to the payment of freight with respect to railroad carriers?

(62) Mr. Chesnut: I object to that. There are so many factors that enter into it.

Mr. Woodcock: I feel this is the most convincing evidence of a special understanding between the Munson Line and these carriers because they are unquestionably, getting a much longer time in which to pay these bills than if they were the ordinary consignee. The defense is that the Munson Line is just like any consignee, just like your Honor, or any body in Baltimore who would order a carload of fertilizer and have it delivered down here. Now, if we can show this credit arrangement, if we can show that there is an unusual credit situation, different from that of the ordinary shipper, it seems to me it tends to show a special understanding.

The Court: Are you confining your questions to the Port of Baltimore?

Mr. Woodcock: Yes.

The Court: Very well, I will permit it.

(Exception noted by Mr. Chesnut).

Q. (By Mr. Woodcock): What is the time when the ordinary private company in Baltimore would have to pay the freight on a carload of fertilizer received here by the Western Maryland, from York, Pennsylvania, if you know? A. I do not know what would be that Road's rules in that case to an individual, but I do know that they have what is known as an accommodation to big corporations receiving great volumes of freight, and they give them, I think it is, ninety-six hours in which to pay those bills.

Q. Well, that is what I thought. 96 hours, isn't it. A. I think that is what they give them.

Q. That is four days. A. That is exclusive of all holidays.

Q. Do you mean to tell his Honor there were any

holidays between the 12th of December and the 21st of
(63) December? A. You will get a Sunday and Saturday afternoon in there.

Q. You still think, with cutting out Sunday and paying the bill on the 21st, you would have paid it within the four days.

Mr. Chesnut: He did not say that he had to pay it in 96 hours. As a matter of fact, there are a whole lot of regulations on that very subject, within the last few months.

Mr. Woodcock: That is our whole point, that the Munson Line didn't have to pay.

Mr. Chesnut: The steamship companies are in a class by themselves.

Mr. Woodcock: In what class are they by themselves?

Mr. Chesnut: At one time so called export shipments; at another time intercoastal shipments—the practice with regard to the time of sailing of a ship has a good deal to do with it. It is in the reports of the Interstate Commerce Commission, if they want to look it up.

Mr. Woodcock: The section, if I may be permitted to refer to the section which seems to be applicable, Paragraph 2 of Section 3 of the Act of 1920: "From and after July 1, 1920, no carrier by railroad subject to the provisions of this Act shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to assure prompt payment of all such rates and charges and to prevent unjust discrimination: Provided, that the provisions of this paragraph shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau of agency thereof, or for any State or Territory of political subdivision thereof, or for the District of Columbia." That
(64) last part has nothing to do with it.

Mr. Chesnut: No, except that the United States is always a very preferred creditor, or debtor.

Mr. Woodcock: We will have to admit that.

Mr. Chesnut: Yes, indeed.

Q. (By Mr. Woodcock): Now, then, the rules and regulations that the Commerce Commission adopted for the time in which the freight should be paid were four days, weren't they?

Mr. Chesnut: Who says that?

Mr. Woodcock: I am asking this witness if he doesn't know that to be a fact.

Mr. Chesnut: I do not know whether he knows it or not.

Mr. Woodcock: He said so a few minutes ago.

A. I believe, as I said, there is an accommodation privilege to the large corporations of ninety-six hours credit.

Q. But no more than ninety-six hours, even to the large corporations? A. We paid some of those bills within twenty-four hours after we got them.

Q. Of course you did. A. We do not hold those bills up for any particular reason to exceed the 96 hour limit.

Q. You misunderstand me. I am not suggesting that. But you have a right to pay them when you please. A. It is our intention to pay them promptly and within the period of the credit time.

Q. The second shipment you received on the 5th of December, 1927, and you paid the freight on the 21st of December. A. From the 5th to the 21st.

Q. Received by the Munson Line on the 5th of December—you got the freight bill on the 6th of December—you paid the freight on the 21st of December. Now, that is more than four days, isn't it? A. Well, there (65) may be some break in the ship's sailing there.

Q. On the next shipment the information is that you

received it on the 25th of October, you got the freight bill on the 5th of November and you paid it on the 10th of November. A. Five days.

Q. And the final one listed here, you got the goods on the 23rd of August and you paid the bill on the 31st of August. Now, there is not a single instance where you paid that bill within four days, is there? A. Not from what you have read.

Q. That is your compilation?" A. But that is not a fact, nevertheless. We pay the bills sometimes within twenty-four hours after we get them and ofttimes we have to phone them for the bills, to bring them in to us so we can pay them.

Mr. Chesnut: That compilation shows that the railroads in some instances were ten days or more in rendering the bills.

Mr. Woodcock: I am not excusing the railroads. It is offered to show there was some unusual understanding about the payment for freight.

Mr. Chesnut: All right.

Q. (By Mr. Woodcock): I will ask you just one more question, Mr. Coria, about this shipment for Charles G. Fischer, Miami, Florida. What does that notation on that bill of lading mean to the operating officials of the Munson Steamship Company? A. Nobody sees that except myself and the clerk who bills the freight.

Q. What does it mean to you, then? A. It means to me that freight is marked "Charles C. Fischer, Miami Florida," and he wants it to go to Miami, Florida.

(66) Q. He wants it to go there? A. Yes, and his letter supports that opinion.

Q. Suppose you didn't have any letter, what would you say that that meant? A. We would reach out for Mr. Fischer and find out what he wanted to do with that shipment.

Q. You would not think that Mr. Fischer wanted it to go to Miami, then? A. We would think he would want it to go there, but we would make him confirm it before we moved it.

Q. You would write him a letter and ask him what he meant? A. We would say, "We have a car of fertilizer, No. so and so, consigned in our care bearing marks "Charles C. Fischer," That would be our way of doing it. As soon as we got the reply we would send it wherever he wanted it sent. He may want it sent to Jacksonville. Those shipments are frequently diverted.

Q. Where does it say on these instructions you are going to pay the freight for Fischer, that you are going to pay the Western Maryland Railroad Company the freight that Fischer owes them? Where is there any express instructions on that point? A. There is none there.

Q. How do you understand you are going to do it? How did Mr. Fischer understand you were going to do it? A. We would hold the property for the freight charges. We would consider the property worth the freight.

Q. You shipped the freight on, that is what you do, and you frequently pay the freight even before you collect it? A. Sure we do. We pay the freight bill of the railroad independent of any collections made at the other end.

Q. Somehow Mr. Fischer and the Western Maryland Railway Company know that is what you do, isn't that correct? A. That we collect the charges from the con-
(67) signee.

Q. Yes. A. Sure, it is very clear in any one's mind those charges are collected from the consignee.

Q. All I want to suggest is that there is some understanding here other than is written out in that letter, now, isn't there?

Mr. Chesnut: Understanding with whom?

Mr. Woodcock: With both the railroad company and with Fischer and the Munson Line, they *are* understand it. A. We have no understanding whatever with the railroad.

Q. Must I go back and ask you then, how did Fischer know you would pay the freight for him that he owed the Western Maryland Railroad?

Mr. Chesnut: You did not read the letter, Colonel. Fischer says to him, when he says, "Send this stuff to Florida," "Will you kindly mail your freight bill to Charles C. Fischer?" Isn't that clear enough that he expects to pay it? Doesn't that show he understands it?

Mr. Woodcock: Where does it say in the letter that the Munson Line will pay the freight that Mr. Fischer owes the Western Maryland Railroad?

Mr. Chesnut: Can you understand anything from that except that this man knows he is to be charged and asks that a bill be sent to him?

Mr. Woodcock: By whom?

Mr. Chesnut: Of course, by the Munson Line. "Will you kindly mail your freight bill to Charles C. Fischer."

Q. (By Mr. Woodcock): Where did the understanding arise which this gentleman just said did exist by which Fischer knew that the Munson Line would pay his freight?

Mr. Chesnut: Mr. Corrier has told you that he might have asked him by telephone; he might have had other correspondence with him on prior occasions. There were other shipments, as a matter of fact, by Fischer. How (68) do we ever learn these things when we travel by railroad or send goods by railroad? By inquiring.

Q. (By Mr. Woodcock): What is the witness's answer to that question, how did Mr. Fischer know it? A. I do not know how he would know it, except from general principles. He might assume it.

Q. How did any of these other shippers know it? A. They might assume by sending their freight forward collect that the charges which we pay out for their account we collect from their customer when we deliver the goods.

Q. Isn't it fair to say that somebody from the Munson Line told them that? A. No, I wouldn't say that.

Q. You tell them everything else, you tell them what the rate will be and how to ship it and where to deliver

it? A. I do not recall ever having told a shipper in any letter of mine anything about his charges. Now, I do not say I would not tell a shipper if I would be in conversation with him that "I would take care of the payment of your charges and act for you at the port and collect those charges for you from the consignee when the freight is delivered at the other end." That is generally understood.

Q. That is what I thought. It is generally understood that would be done. That is all.

RE-DIRECT EXAMINATION

By Mr. Chesnut:

Q. Now, just a word about the time of payment. Do you know yourself what the latest ruling of the Interstate Commerce Commission is on the time of payment applicable to large transportation shipments, like in this case? A. Well, I do not know from any tariffs or any such things as that—only from hearsay. I under-
(69) stand it is 96 hours.

Q. Do you know when that 96 hours begins to run? A. I think it is 24 hours from the next morning after the sailing of the ship.

Q. 24 hours after the ship sails? A. Yes.

Q. As a matter of fact, you say that you wait, of course, for the freight bills to be rendered by the railroad and then you assemble them and audit them and in due course you pay them? A. Exactly.

Q. Do you have any arrangement of any kind with the railroad that you are to defer the payment of the bills for any length of time, any special credit? A. None whatever, only the regular rules, whatever their rules are, which we try to respect and live up to.

Q. Have you any arrangement with the railroad to give you additional credit or time of payment of their bills with reference to this particular kind of merchandise on this particular kind of shipment? A. None whatever.

Mr. Chesnut: That is all, Mr. Coria.

(Examination of witness concluded.)"

Thereupon **Frederick J. Couse**, a witness of lawful age, produced on behalf of the respondent, having been duly sworn, testified that he had been with the Baltimore and Ohio Railroad twenty-three years and has been at the head of the Foreign Freight Department. The original scope of the activities of the foreign freight department contemplated only foreign business, but with the development of the intercoastal and coastwise traffic, thate was also placed under the jurisdiction of the foreign freight department, but the destination itself has never been changed. He is at the head of the Department of the Baltimore and Ohio Railroad which deals with the bringing of merchandise by rail by the (70) Baltimore and Ohio Railroad to seaboard, and which is destined to go on by water, with the exception of that which is destined to go by the Merchants and Miners and the Baltimore and Carolina Steamship Company.

The primary reason for excepting them is not that these last mentioned have joint arrangements with the railroads. That is one reason, but the more important, probably, is that those lines have their own piers and the reason why the coastwise traffic was placed under the Foreign Department, other than those two, was due to the fact that these coast wise lines have to use the same common terminal which all ships have to use, which necessarily creates a certain community of interest, and in order to coordinate those activities and keep them all satisfied, it was thought best to concentrate the handling under one department. The witness has been the head of that department for fourteen years, and it includes intercoastal as well as coastwise, intercoastal being what goes through the canal to the Pacific.

He is familiar with the practice of the railroads and water carriers, respectively, in connection with such shipments. He knows the Munson Steamship Line very well. There are water carriers going from Baltimore, which do the same general character of business as the Munson Line, Isthmian Line, Argonaut Line, the Nelson Line and the Arrow Line. These are intercoastal.

Some of those have joint arrangements or common arrangements with the railroad and some have not. The

Baltimore and Ohio has to his knowledge no common arrangements with the Munson Line about through traffic, and he would know of such an arrangement if it existed.

Solicitation of freight to be carried over the Baltimore and Ohio Lines to Baltimore for water shipment is one of the prime objects of his department, the volume having a direct relation to the success of the railroad. The opening of the Panama Canal gave a great deal of stimulus to the volume of freight transportation to the seaboard, the reason being that the actual cost of combined and water transportation from the Atlantic seaboard, or, say, points as far west as Pittsburgh, or even farther, to Baltimore, plus the ocean carriage through the Canal up to San Francisco is less than sending such freight by all rail across the continent. Therefore, the opening of the Panama Canal greatly increased such business.

(71)

Eliminating from this discussion the water lines that have a common arrangement with the Baltimore and Ohio Railroad, the Baltimore and Ohio maintains a large staff of solicitors all over the country at many points off of the railroad as well as on the railroad. The duty of these solicitors is to get business for the Baltimore and Ohio Railroad. Under the general arrangement of solicitation it might be well to explain that a certain territory is divided into various areas or sections, and one man is assigned to one area and another man to another and in the course of covering that territory, that solicitor if he is worth anything at all will know the shippers who are interested in coastwise points, and those who are interested in intercoastal points, and those who are interested in foreign traffic, and those who are merely interested in local shipment.

The Baltimore and Ohio do not maintain any solicitors in the West, who devote their exclusive time to the solicitation of coastwise or intercoastal traffic. As a common carrier it is the company's policy to remain neutral and not to make any discrimination or preference between any of the water carriers out of Baltimore. It is immaterial to the Baltimore and Ohio Railroad and its solicitor which of the water carriers takes the shipment at Baltimore.

Witness stated that the Baltimore and Ohio publishes

(72) a list once a month of the contemplated sailings of the coastwise and intercoastal steamers, in order to explain to shippers at inland points who wish to send goods to Florida points, or through the Canal how mechanically he can be aided in doing it. He produced such a paper which was offered in evidence, as defendants Exhibit No. 4) (Note) (Defendant's Exhibit No. 3 is generally similar to Defendant's Exhibit No. 4, except that it was dated March 1, 1929; not included.) "Defendant's Exhibit No. 4 is as follows:

"1827—100 years of service—1927"

THE BALTIMORE & OHIO RAILROAD COMPANY

Baltimore, Md. August 1, 1927.

Bulletin No. 20

To—Officers, Agents and Shippers:

Below is given schedule for August, and first ten day of September, of Coastwise Service between Baltimore, Md., and Southern Ports.

In order to insure prompt delivery all freight for the lines listed below should be consigned via the Baltimore & Ohio Railroad to our Locust Point Terminals at Baltimore, Md.

Name of Line	Name of Steamship	Sailing Date	Ports of Call
Baltimore & Carolina S.S. Co. (Weems Line) (Pier 5, Pratt St.)	A Steamer	8/ 5/27	(Charleston, (S. C., West (Palm Beach, (Fla., Miami, (Fla., Havana, (Cuba
	A Steamer	8/12/27	(As above)
	A Steamer	8/19/27	(As above)
	A Steamer	8/26/27	(As above)
	A Steamer	9/ 2/27	(As above)
	A Steamer	9/ 9/27	(As above)
Bull S.S. Line (Citizens' Nat'l (Bk. Bldg.	A Steamer	8/ 4/27	(Tampa, Fla (St. Peters- (burg, Fla

(73)	A Steamer	8/11/27	(As above)
	A Steamer	8/18/27	(As above)
	A Steamer	8/25/27	(As above)
	A Steamer	9/ 1/27	(As above)
	A Steamer	9/ 8/27	(As above)
Merchants & Miners Transportation Company (112 So. Gay St.)	*Alleghaney	8/ 2/27	(Savannah, (Ga., Jackson- (ville, Fla.
	*Gloucester	8/ 5/27	(As above)
	*Juniata	8/ 9/27	(As above)
	*Alleghaney	8/12/27	(As above)
	*Gloucester	8/16/27	(As above)
	*Juniata	8/19/27	(Savannah, (Ga., Jackson- (ville, Fla.
	*Alleghaney	8/23/27	(As above)
	*Gloucester	8/26/27	(As above)
	*Juniata	8/30/27	(As above)
	*Alleghaney	9/ 2/27	(As above)
	*Gloucester	9/ 6/27	(As above)
	*Juniata	9/ 9/27	(As above)
Munson S.S. Line (Keyser Bldg.) (See Note 1)	A Steamer	8/11/27	(Jacksonville, (Fla. Miami, (Fla., Havana, (Cuba
	A Steamer	8/25/27	(As above)
	A Steamer	9/ 8/27	(As above)
Newtex Line (The Cottman Co.) (Keyser Bldg.)	Lake Gaither	8/ 1/27	(Houston, (Tex.
	Lake Flatonia	8/ 8/27	(As above)
	Lake Giddings	8/15/27	(As above)
	Lake Ellithorpe	8/22/27	(As above)
	Lake Inglenook	8/29/27	(As above)
	Lake Gaither	9/ 5/27	(As above)

*Carries both passengers and freight.

Railroad traffic detail and information involving all
(74) lines other than Baltimore & Carolina S. S. Co.

and Merchants and Miners Transportation Company is handled by this office. Similar information concerning the Baltimore & Carolina S. S. Company and Merchants & Miners Transportation Company is handled by Mr. E. S. King, District Freight Agent, Baltimore, Md.

Merchants & Miners Transportation Company will accept traffic for West Palm Beach and Miami Fla., in connection with their Jacksonville service.

The Munson S. S. Line will accept freight on through bills of lading to Havana, Cuba, but not on traffic destined to Florida.

New England, New York & Texas Steamship Corporation (Newtex Line), operates a weekly service from Baltimore (sailing every Monday), to Houston, Texas. Cottman Company, Keyser Building, Baltimore Agents. Steamers dock Baltimore & Ohio Railroad Terminals, Locust Point, Baltimore, Md. Shipments for the Newtex Line should be billed to Baltimore, Md., only and the final destination should be shown in the body of the billing.

Inquiries involving water rates, bookings, etc. should be addressed directly to the Baltimore Agents of the several steamship companies.

Rail bills of lading should show name of ultimate consignee, c/o the designated steamship line, destination Locust Point, Baltimore, Md., and in the body of the bill of lading should appear notation indicating ultimate destination in Florida. Through bills of lading can be issued in connection with the Merchants & Miners Transportation Company and the Baltimore & Carolina S. S. Co. *ONLY*

All of the steamship lines, except the Baltimore & Carolina S. S. Co., (See Note 2) maintain their regular loading berth at Locust Point Terminal of the Baltimore and Ohio Railroad. Traffic routed via Baltimore and Ohio Railroad will receive direct handling from car to ship, but if lighterage is necessary this is done without charge to shipper provided the rail rate is 9c per 100 lbs. or more.

Note 1: Traffic for the Munson S. S. Line should be consigned in their care, Curtis Bay Merchandise Pier of the Baltimore and Ohio Railroad, Curtis Bay, Md.

Note 2: The Baltimore & Carolina S. S. Co. maintain their own loading berth and will absorb lighterage charge on L. C. L. freight; the Baltimore & Ohio Railroad will lighter free of charge carload freight when rate is 9c per 100 lbs. or more.

Yours very truly,

(Signed) EARLE C. WIGHT,
Foreign Freight Agent.

ecw/fdd

MADE IN U.S.A."

He stated that there was also such a sheet for the (75) intercoastal trade. A Mr. Wight in his office prepares this circular specifically for the Baltimore and Ohio Railroad. It is not prepared as a result of any agreement or arrangement with any of the steamship lines. It is prepared on the initiative of the Baltimore and Ohio Railroad to get freight business in Baltimore, the Company having originated the idea. The Baltimore and Ohio Railroad gives information to the shipper as to the matters that would facilitate the handling of the shipment.

The witness stated that a distinction was made in the circular notice to shippers between through bills of lading, which the circular says the Munson line will issue for Havana, Cuba, but not for Florida, that freight consigned to the Munson Steamship Line when for Florida will be rebilled locally, because Havana is considered a foreign country in connection with issuance of through bills of lading which have been approved by the Commission. For traffic that comes to Baltimore consigned to the Munson Line for Florida ports, the Baltimore and Ohio does not issue a through bill of lading, because the issuance of such bills of lading is not permissible.

"Q. Why not? A. Because they do not file joint rates with the Commission.

Q. Because you do not have an arrangement with the Munson Line? A. Certainly not.

Mr. Woodcock: That is not what he said.

Mr. Chesnut: Say it again. Colonel Woodcock thinks I have you wrong on that

Mr. Woodcock: You certainly did not quote what he (76) said.

Mr. Chesnut: But there is no doubt about it.

The Witness: May I have the question.

Q. (By Mr. Chesnut) Have I misquoted you in any way? A. I shouldn't think so.
Q. You don't think so? A. No, sir.

Mr. Woodcock: I would like to have the testimony read.

(Testimony read by the stenographer.)

Mr. Woodcock: Pardon me, but I submit Mr. Chesnut's remark is absolutely different from what the witness has stated.

The Court: Mr. Chesnut was just making a deduction from his answer.

Mr. Woodcock: That may be a deduction, but it certainly was not what the witness said.

Mr. Chesnut: I will certainly get it right, Colonel, if you will give me a little time.

Q. I want you to make it very plain, Mr. Couse, what you meant in the circular when you said to shippers, or prospective shippers, by the Baltimore & Ohio Railroad Company to Baltimore, that the Munson Line will accept freight on through bills of lading to Havana, Cuba, but not on traffic destined to Florida, and my question to you is, Why the distinction between a through bill of lading for Cuba and a local bill of lading for Florida? A. And I believe my answer was to the effect that the traffic for Havana is to a foreign country and therefore permissible under the Interstate Commerce Law. The rules prescribe a form of through bill of lading to be

(77) issued to foreign countries. In fact the reason the through bill of lading is not issued to Florida ports is because there is no rate arrangement or any arrangement of any character between the Munson Line and the Baltimore & Ohio Railroad."

The witness continuing stated that the bill of lading in the Fischer shipment is a local bill of lading, because it is consigned to Charles C. Fischer, c/o The Munson Line, Baltimore, Maryland. The effect of the notation in the box, headed "Description of Articles and Special Marks and Exceptions" is merely as information and largely for the rail carrier. The explanation of the remark in the box is that if a shipment merely came in consigned to the Munson Line or care of the Munson Line it would have to be held out in the yard until the Baltimore and Ohio knew where it was going. By that the witness meant that the Baltimore and Ohio would have no information which would indicate whether it was going intercoastal, or to Havana, or going to Florida ports. Having this notation in the body of the bill of lading helps the Railroad Company to the extent of segregating that property and facilitating the delivery of it by proper classification in the B. and O. "hold" yard. The Railroad Company has a number of different delivery points here in Baltimore. For export business it takes the freight nearest to the pier for which it was intended, of that line. The Railroad Company has approximately ten piers. The notation in the body of the bill of lading helps the Railroad to know to which of its ten piers it is most convenient to take this particular freight. In the case of the Munson Line, it is even more (78) marked, because they load their intercoastal steamers at Curtis Bay and their coast wise steamers at Fell Street. The two are about seven miles apart, so the point to the witness' remark may be seen.

There is now, under the orders of the Interstate Commerce Commission, what is called a uniform bill of lading, and Fischer's Exhibit No. 1 is one of them by the customs of the railroad business with respect to bills of lading, there is nothing unusual or peculiar to this particular class of traffic whereby there is a notation such as is on this bill of lading in the descriptive box "For Charles C. Fischer, Miami, Florida."

FREDERICK J. COUSE

"Q. Is it customary or not to put notations with regard to the goods and so on in that box for other kinds of journeys for merchandise? A. Where a similar water carriage is involved and no through arrangement exists."

The witness continued that there was a Florida boom, as we refer to it, in about nineteen hundred and twenty-six, when there was a large volume of business offered and at that time the Railroad Company started the list, so he believes that it antedated nineteen hundred and twenty-seven.

The waybill such as is in the Fischer shipment does not ordinarily go to the water carriers in this class of business. It is retained by the rail carrier.

There is no arrangement of any kind with the Munson Line regarding division of freight, or any con-
(79) tingent arrangement that if they cannot collect the freight, the railroad will not hold the Line liable for it. The general practice with regard to the collection of the railroad inland freight is for the Munson Line to pay the railroad charge and carry it against the shipment and collect the total from the consignee, the Railroad Company rendering its bill to the Line. The bill is rendered on the basis of the railroad full local to the port, meaning by that, the Railroad published filed rate from the shipping point or origin to Baltimore. There can be no arrangement in any particular case whereby the Munson Line pays more or less to the Railroad than the published rate. The Railroad would not accept more or less. If it did, it would be violating the law.

CROSS EXAMINATION

Witness stated that he was foreign freight traffic manager and thoroughly familiar with all these details and Mr. Wight is the operating head of the Locust Point Terminal. The functions of the witness' department are those of the Traffic Department as distinguished from operating. The Departments are co-operative ones. His experience has been over so long a period that he has a very complete and clear comprehension of the whole thing.

"Q. This is one of the shipments handled from the

Wabash Railroad to the Baltimore & Ohio Railroad, and then on through the Munson Steamship Company line, which was offered in evidence? A. Yes.

Q. Now, you got this shipment from the Wabash Railroad—where did you get it, by the way? A. Well, (80) there are several junction points. I do not know where we got this one. This one doesn't show, but coming from Detroit the usual junction is Toledo, Ohio.

Q. Isn't it a fact that you would pay the freight to the Wabash from Detroit to Toledo, before you had collected it from the Studebaker Automobile Company? A. Well, the adjustment of accounts as between rail carriers is what is known as interline adjustments. That is an audit adjustment. That does not come under the scope of the 96-hour rule, if that is what you are referring to.

Q. No, I was not asking you about that. The simple question is, if the Baltimore & Ohio Railroad does not pay the Wabash Railroad the freight on these automobiles from Detroit down to Toledo, before you had collected it? A. I think if the shipment is going collect, the operation is the reverse: The Wabash allows us our proposition of rate. Of course, it all depends on who collects the freight. If we collect the freight at Baltimore we allow the Wabash their proportion and then, again, it may be prepaid.

Q. That is what is done in this case, the Munson Line paid you the freight and you paid the Wabash its part of it? That is the way it was done, as I understand it? A. That is right.

Q. It is like advancing one step after another, you pay the Wabash and the Munson pays you, or, to put it the other way, the Munson pays you and you pay the Wabash? A. I believe it is a question of monthly adjustment between the rail carriers.

Q. This circular of August 1, 1927, says, "Rail bills (81) of lading should show name of ultimate consigned, care of the designated steamship line," doesn't it? A. Yes.

Q. And that is shown on this bill of lading, Isn't it? A. Yes.

Q. In other words, this bill of lading follows the instruction of this circular to the letter? A. That is right.

Q. Now, you obtained the information, or some of the information, on his yellow circular from the Munson Steamship Company, did you not? A. I wouldn't say so.

Q. Where did you get the information about the Munson Steamship Line, unless the Munson Steamship Line supplied it to you? A. The clause to which you refer differentiates between the issuance of a through bill of lading to Cuba but not on traffic destined to Florida.

Q. But take this particular clause about the Munson Steamship Line, Will accept freight on through bills of lading to Havana, Cuba; but not on traffic destined to Florida. Now, the question is a very simple one, if the Munson Steamship Company did not supply you with that information. A. They did not have to supply us with the information. We knew it.

Q. How did you learn it? A. Because the Munson Line operates their Havana service in conjunction with their coastwise. In other words, the same steamers make the Florida ports and then proceed to Havana.

Q. Now, Mr. Couse, it is perfectly obvious, isn't it, (82) that the information you have here about the Munson Steamship Line, what they will or will not do, was supplied either directly or indirectly by the Munson Steamship Company? A. I wouldn't say so, no, sir.

Q. Then how did you learn that the Munson Steamship Company would not accept a through bill of lading on traffic destined to Florida? A. We know that they cannot, because they do not file tariffs with the Commission.

Q. You mean you went through that indirect way of deducing that fact instead of simply asking the Munson Line about it? A. We did not deduce anything. We simply stated the fact that under the law they were not permitted to issue through bills of lading to Florida. That is the way—

Mr. Woodcock: I understand—

Mr. Chesnut: If you do not wait for the answers you can not get them.

Mr. Woodcock: I accept that observation. I have no intention of cutting this witness off. I want the witness

to be just as fair with me in answering the questions and not go off on some collateral matter.

The Witness: I will try to be fair with you.

Q. You have on here the date of sailing of the Munson Steamship Line? A. Yes, sir.

Q. Where did you get that information? A. From (83) the Munson Steamship Line.

Q. Well, I thought so. Then, certainly, some information on this yellow sheet you do obtain from the Munson Steamship Line, don't you? A. It is possible, certainly.

Q. It is not only possible, but it is highly probable, isn't it? A. Well, if I may be permitted to elaborate a little further on what I have just said.

Q. No, I do not wish you to. I want you to answer the question to let us go on. I want a direct answer from you, if the information respecting the Munson Steamship Line on this circular was not obtained from the Munson Steamship Line? A. Possibly it was.

Q. All right. Now, then, we will leave that phase of it. Now, I want you to tell the court and jury how you would handle a shipment coming over your lines on a through bill of lading issued to the Merchants & Miners Company, or issued for shipment over the Merchants & Miners Company.

Mr. Chestnut: I object to that.

Mr. Woodcock: How would you handle that shipment?

Mr. Chesnut: I object to that because it is utterly irrelevant. If the position or desire of the Government is to show that physically there isn't any particular dissimilarity between the two transactions, we do not dispute that. The physical characteristics are those which apply as a matter of nature to the actual handling. It is not our contention that there is any difference between the transactions so far as the more physical de- (84) livery of the merchandise from the rail to the water carrier is concerned. The difference is, of course, in the question of whether there is or is not an agree-

ment and as evidentiary of that, as to whether there is or there is not a through bill of lading.

Mr. Woodcock: I am content with that admission. I understand it is admitted for the purpose of this case that the physical handling of goods by the Baltimore & Ohio Railroad is exactly the same whether there is a through bill of lading or is not a through bill of lading.

Mr. Chesnut: In so far as the physical actions are concerned in loading and unloading the merchandise.

Mr. Woodcock: I had the word "physical" in my statement.

Mr. Chesnut: I do not think, really, we ought to, shall I say, spar about that. It is a thing that is so perfectly plain.

Mr. Woodcock: Now, then Mr. Couse, as it has been admitted that the physical handling is the same, will you point out whether there is any difference in the handling of shipments destined to be forwarded by the Merchants & Miners Line by through bill of lading and those destined to be forwarded by the Munson Line, whether there is any difference in the handling. A. You are not speaking in a physical sense now?

Q. Well, I understand there isn't any difference in a physical sense. That is admitted, I believe. I am asking you if there is any difference in any other sense. A. I should say yes.

Q. Where is the difference? A. Because the (85) handling of the shipment on a through bill of lading gives the shipper the privilege of banking that through bill of lading and discounting his bill before the arrival of the property at its ultimate destination, which he can not do under the present arrangement with the Munson Line.

Q. That is, there is a difference in certain legal rights that the shipper may have? A. True.

Q. Now, can you think of any difference as far as the railroad is concerned? A. I do not know that there

is any substantial difference so far as the railroad is concerned.

Q. No. Well, we agree on that point. Now, let us go into the suppositions a little bit further. If you forward by the Merchants & Miners, the Merchant & Miners collect the freight at the end of the line and pays you, doesn't it? A. Yes, sir.

Q. And that same thing is done with the Munson Steamship Company? A. Yes, sir.

Mr. Chesnut: The witness did not answer that. That was your observation.

Mr. Woodcock: I thought he said, "Yes, sir."

Mr. Chesnut: Of course, we say yesterday that there was no relation between our collection of the freight bills and our payment to the rail carriers. Now, is it your idea that there is any difference between us (86) on that point?

Mr. Woodcock: I understand the witness to say that there isn't any difference between the way freight is paid upon shipments forwarded by the Merchants & Miners and upon shipments forwarded by the Munson Line.

Mr. Chesnut: Colonel Woodcock, it will take a lot of time to go all over this again. To the extent that we can have a common understanding, let us do it so as to avoid possible controversy. In the sense that both delivering lines some place collect from somebody the whole freight, there is no difference. In the sense that there is only one freight charge with the through shipment and in the sense that there are two separate freight charges with the Munson Line, there is a difference.

Mr. Woodcock: That last point is not in evidence so far.

Mr. Chesnut: Oh, yes, indeed. Mr. Coria has expressly testified to it. The ocean bill of lading shows that.

Mr. Woodcock: I have not seen any ocean bill of lading.

Mr. Chesnut: Oh, my gracious, Colonel, you put five in evidence.

Mr. Woodcock: They are not ocean bills of lading.

Mr. Chesnut: What is an ocean bill of lading?

Mr. Woodcock: Do you mean this thing that the Munson Line issues?

Mr. Chesnut: I know you have referred to it a number of times just as a blue piece of paper, as if it were a scrap of paper, but it is a formal contract for the protection of the shipper.

Mr. Woodcock: If that is the document you are re-
(87) ferring to as an ocean bill of lading, I accept the designation, although it does not appear anywhere that that is the name of it. If that is what you mean, why, that is all right.

Mr. Chesnut: It is not at all abstruse. The thing has been in existence for some one hundred years and I thought every lawyer knew something about it.

Q. (By Mr. Woodcock) You have testified, just before Mr. Chesnut's observation, that there isn't any difference in the way of collecting the freight. I want to have that definite and positive. A. I wouldn't say there is no difference in the way of collecting the freight. There may be a difference in the method of adjustment between carriers—

Q. Does the Merchants & Miners collect the freight from the ultimate consignee and pay you? A. I understand they do.

Q. And that is the way the Munson Steamship Company does it, isn't it? A. I understand that is the true fact.

Q. Thus far there is no difference. Do you mean, as

Mr. Chesnut has suggested, that you are paid less or more freight when you forward by the Merchants & Miners than when you forward by the Munson Line?

To the last question counsel for the defendant objected as irrelevant and the Court sustained the objection, saying "I do not think that is in issue. The question here is whether there is a common arrangement, not whether the rates are the same or ought to be the same."

To which action of the Court in sustaining the objection of the Respondent to the above question, and in not (88) permitting it to be asked and answered, the Petitioner then and there excepted and prays the Court to sign and seal this, the Petitioner's Fifth Bill of Exceptions, which is accordingly done this 17th day of May, nineteen hundred and twenty-nine.

WILLIAM C. COLEMAN (Seal),
United States District Judge.

PETITIONER'S SIXTH BILL OF EXCEPTIONS

WHEREUPON after the evidence set forth in the Petitioner's Fifth Bill of Exceptions, which is hereby referred to and made a part hereof as fully as though incorporated herein at length:

"Mr. Woodcock: I would like to ask that question. The thing has gotten involved a good deal, and then your Honor can overrule it and allow us an exception.

The Court: Very well.

Q. (By Mr. Woodcock): I will ask you if there is any difference in the part of the freight that the Baltimore & Ohio receives upon a shipment from Cumberland to Miami when it is forwarded from Baltimore by the Munson Line?"

And the respondent objected on the ground of irrelevancy and obscurity to this question and the Court sustained the objection, to which action of the Court in sus-

taining the respondent's objection to the above question (89) and in not permitting it to be asked and answered, the Petitioner then and there excepted and prays the Court to sign and seal this, the Petitioner's Sixth Bill of Exceptions, which is accordingly done this 17th day of May, nineteen hundred and twenty-nine.

WILLIAM C. COLEMAN (Seal),
United States District Judge.

PETITIONER'S SEVENTH BILL OF EXCEPTIONS

WHEREUPON after the evidence set forth in the Petitioner's Sixth Bill of Exceptions, which is hereby referred to and made a part hereof as fully as though incorporated herein at length, the said witness continued his testimony as follows:

"Q. After you have issued this yellow sheet, defendant's Exhibit 4, which is called "To Officers, Agents and Shippers," and shipments begin to roll over the Baltimore & Ohio Railroad from Detroit, Toledo, and the merchandise goes forward over the Munson Line, you have there a continuous carriage or shipment of merchandise, haven't you? A. I would not call it continuous, no, sir.

Q. What is your answer. A. I would not call it continuous, because the journey breaks at Baltimore on the bill of lading.

Q. Well, does the journey break in Baltimore when the shipment is by the Merchants & Miners? A. Yes, (90) sir.

Q. It does? A. Yes, in a physical sense.

Q. Then you have no such thing as a continuous shipment at all? A. In a physical sense, no.

Q. Well, now, in a transportation sense? A. Yes.

Q. Wouldn't you call both of those movements a continuous carriage in a transportation sense? A. No, sir.

Q. Where is the difference? A. Because on your bill of lading for the Munson Line the railroad completes its contract of transportation at Baltimore. On your through bill of lading issued by the Merchants & Miners,

if you please, that carries it through to its destination and my understanding is that the Merchants & Miners recognizes the railroad bill of lading as a through document.

Q. Now, if you will eliminate the question of the bill of lading, and the legal effect of the bill of lading, wouldn't you say that the carriage is a continuous one?

Mr. Chesnut: Your Honor, you can not play Hamlet without Hamlet in the part. When the Colonel says, "If you eliminate the heart of the case, then won't so and so be true," you are setting up an entirely different case. Therefore, the question is not relevant in any way to this issue. Might I just have that question read to your Honor so your Honor will see the point?

(91) Mr. Woodcock: I am content to withdraw the question and ask another one. It is perfectly obvious what I am getting at, even if I am less astute than I might be in arriving at it. Let us withdraw that question and start again.

Mr. Chesnut: Are you going to ask the same question?

Mr. Woodcock: I could not even remember what that question was at this stage, so it certainly won't have exactly the same words in it.

Mr. Chesnut: All right.

Q. (By Mr. Woodcock): You admit there is such a thing as a continuous carriage or shipment, don't you?
A. In a physical sense, no.
Q. Well, in a moral or metaphysical sense then?

And the Respondent objected to this question and the Court sustained the objection, to which action of the Court in sustaining the objection of the Respondent and in not permitting the question to be asked and answered, the Petitioner then and there excepted and prays the Court to sign and seal this, the Petitioner's Seventh Bill

of Exceptions, which is accordingly done this 17th day of May, nineteen hundred and twenty-nine.

WILLIAM C. COLEMAN (Seal),
United States District Judge.

PETITIONER'S EIGHTH BILL OF EXCEPTIONS

(92) WHEREUPON after the evidence set forth in the Petitioner's Seventh Bill of Exceptions, which is hereby referred to and made a part hereof as fully as though incorporated herein at length, the said witness continued his testimony as follows:

"Q. You say there is not ever a continuous carriage in a physical sense? A. That is true.

Q. Because the goods stop or are taken off of the freight car and stop on the pier and then are put on the ship? A. Yes, sir.

Q. That is what you mean? A. Yes.

Q. Now, in a transportation sense there is such a thing as a continuous carriage, isn't there? A. Yes, sir.

Q. Now, a shipper by the Munson Line starts his freight at Detroit. It is carried to Toledo and it is carried to Baltimore and then it is carried to Miami. Does that shipper have to take care of the transshipments that happen in that carriage—does the shipper have to do anything?

Mr. Chesnut: I object to that, sir. I do not think it helps us any in this case. It depends on whether he has a through bill of lading or not.

The Court: You are talking about this particular shipment?

Mr. Woodcock: Yes.

(93) The Court: I will permit that question.

Mr. Woodcock: Does the shipper have to do anything about it?

Mr. Chesnut: May it be made plain to Mr. Couse that you are talking about this particular shipment you hold in your hand?

Mr. Woodcock: I certainly am.

Mr. Chesnut: Won't you show it to him?

Q. (By Mr. Woodcock): Do you want to see this? You understand what I am talking about? A. That is the same one you showed me?

Q. Of course you do. A. Yes, sir.

Q. Does the shipper have to do anything toward the transshipment of those automobiles at Toledo or Baltimore, after he delivers them to the carrier at Detroit? A. It is not necessary for the shipper to interfere so far as the rail carriage is concerned, up to the port.

Q. Well, does the shipper have to come down to Baltimore and pay the Baltimore & Ohio Railroad the freight on the automobiles and then take them around and load them on the Munson Line in order to get them forwarded? A. No, sir.

Q. He does not? A. No, sir.

Q. Then neither does the shipper have to do anything in Baltimore? A. He has to give the forwarding instructions to the Munson Line.

(94) Q. But he has written them right on this bill of lading as your instructions say he should do? A. That is merely an indication.

Q. That is the exact indication which your yellow sheet says should be given? A. That is true.

Q. So the shipper doesn't have to do anything. Now, let us see if this is not, in effect, in a transportation sense, a continuous carriage from Detroit to Miami, now, isn't it? A. I should not say so, no, sir.

Q. The shipment moves forward, doesn't it? A. Yes.

Q. Without the shipper intervening? A. As far as the rail movement is concerned, that is true.

Q. Or as far as the water movement is concerned? A. He has to intervene there to give his forwarding instructions.

Q. Doesn't he give those up at Detroit? Wasn't that

written down at Detroit and not in Baltimore? A. That is true.

Q. Then he doesn't have to do anything at Baltimore, does he? A. He has to give instructions as to the reforwarding of it.

Q. But, sir, he gives those instructions up at De-
(95) troit, doesn't he?

Mr. Chesnut: One minute. I am sorry I had to interpose objection, but the District Attorney is asking questions in a subtle sense.

Mr. Woodcock: I am not capable of subtlety.

Mr. Chesnut: As applied to this rather detailed system of traffic transportation. This question, and the fallacy of it is this, "Referring to that notation on that bill of lading, has the shipper not given instructions by that notation?" We know in this case at this time, by Mr. Couse's own testimony, that he says that instruction is put there for the convenience of the Baltimore & Ohio Railroad Company in placing the freight at Baltimore, and then when the question is framed in a way to get the witness to say yes, that that notation is instructions to the Munson Line, it carries a subtle meaning which, I think, is improper in the question.

Mr. Woodcock: Oh, no, your Honor, the witness kept distinguishing about something that had to be done at Baltimore. I simply want to suggest that nothing is done in Baltimore.

The Court: I will allow you to ask the question.

(Question repeated to the witness).

A. That notation is put on that bill of lading for our guidance, merely to the effect that the property is for delivery to the Munson Line. That is as far as we go.

Q. Does this shipper, in order to get these automobiles to Florida, have to do anything in Baltimore?

Mr. Chesnut: Now, the witness has answered that three times.

Mr. Woodcock: He has never answered that question, and I insist on a yes or no answer and then he may make any explanation he wishes to make.

(96) The Court: Give your answer again, Mr. Couse.

Mr. Woodcock: Yes or no?

A. Yes.

Q. Well, what does he do in Baltimore, what did he do in this particular case in Baltimore? A. I do not know what he did in that particular case.

Q. What does he do in any case in Baltimore? A. I do not know what he does in any case in Baltimore.

Q. What does he have to do in Baltimore? A. The usual custom is for him to send his forwarding instructions to the Munson Line.

Q. Does he do that in Baltimore or at the place where he starts the shipment?

Mr. Chesnut: Objected to as immaterial.

The Court: I will permit the question.

A. He may do it at either place.

Q. (By Mr. Woodcock): Where did he do it in this case, at Baltimore or at Detroit?

Mr. Chesnut: He has told you he doesn't know where or how he did it.

Q. (By Mr. Woodcock): Where did he do it in this case, in Baltimore or in Detroit? A. The handwriting is apparently the same. Therefore, I should say it was probably done in Detroit.

Q. Well, now, isn't that exactly what this notation of yours contemplates should be done? "Rail bills of lading should show name of ultimate consignee, care of the designated steamship line, destination Locust Point, Maryland, and in the body of the bill of lading should (97) appear notation indicating ultimate destination in Florida." Isn't that exactly what was done? A. That is for our guidance, yes, sir.

Q. That is what he did and that is what you told him to do? A. That is right, for our guidance.

Q. And he didn't have to do anything more in Baltimore, did he? A. I do not know whether he did or not in this particular case.

Q. You say you do not know whether he did have to do anything else or not? A. In this particular case. He may have diverted that shipment to some other consignee in Florida. That notation on there is not final, as far as we are concerned.

Q. Aside from a change of mind and a change of intention, did he have to do anything more in Baltimore to get this shipment down to Miami? A. So far as we are concerned he had no more to do with it as far as delivering it to the Munson Line is concerned. What he did with the Munson Line we do not know.

Q. Well, then, doesn't this plan which you outline in your yellow circular work out so that the shipper may ship from Detroit to Miami without any intervention in Baltimore—doesn't it work out that way? A. Practically so, yes, sir.

Q. Well, there is a plan, then, by which a shipper may ship from Detroit over the Munson Line and the Baltimore & Ohio Railroad without any intervention at Baltimore, isn't that so?

(98) Mr. Chesnut: Objected to. The word "plan" is ambiguous.

The Court: I will permit the question.

Q. (By Mr. Woodcock): There is such a plan and this is the description of it, isn't it? A. It is possible, yes.

Q. Well, now, if there is a plan, isn't this then an arrangement by which a shipper may ship automobiles from Detroit down to Miami without any intervention on his part at Baltimore? A. Those instructions do not contemplate such an arrangement, no sir.

Q. What kind of an arrangement do they contemplate, if they do not contemplate, for the convenience of the shipper, an arrangement or a plan by which he can ship automobiles from Detroit down to Miami?

Mr. Chesnut: Objected to, sir.

Q. (By Mr. Woodcock): What does it contemplate, if it doesn't contemplate that?

Mr. Chesnut: The point of that question, if it has any, is to indicate that the arrangement referred to in the issue we are trying is an arrangement between the shipper and the rail carrier. That is not the arrangement referred to as applicable to the water carrier. It means a common arrangement between the rail and the water carriers.

The Court: I will sustain the objection. I think that is the crux of the question and so your question, Colonel Woodcock, is asking for a legal definition, rather than a question of fact.

(99) Mr. Woodcock: I have not any hope of this witness ever coming out and admitting that there is a common arrangement, but he is on cross-examination and he has said that there is a plan and that this is the outline of the plan.

The Court: I think the objection of Mr. Chesnut is well taken, that if you use the words "common arrangement"—

Mr. Woodcock: I haven't used them.

The Court: Then you should use the whole language of the Act.

Mr. Woodcock: I have not used it.

The Court: I thought you had.

Mr. Woodcock: I used the word "shipment." I said, "Isn't there an arrangement, therefore, by which a shipper may ship automobiles at Detroit to Miami by way of the Munson Line without any trouble on his part at Baltimore?"

The Court: I will permit that question. I think it has already been answered.

A. The purpose of that rule is to facilitate the delivery of the property, as far as the railroad is concerned, and that is as far as our interest goes.

Q. (By Mr. Woodcock): Now, you make it necessary for me to ask the question again. Isn't there then an arrangement by which a shipper may ship automobiles at Detroit by the Wabash Railroad and the Baltimore & Ohio Railroad and on to Miami by the Munson Line without any intervention on the part of the shipper at Baltimore—isn't there such an arrangement? A. If you call that instruction an arrangement, I presume there is, if you call it by that name.

(100) Q. That is the effect of what has been instructed, isn't it? A. Practically.

Q. That a shipper can do that. Well, now, that is an arrangement for a continuous carriage, isn't it? A. No, sir.

Q. Well, if it is not an arrangement for a continuous carriage, what is it? A. The movement is broken at Baltimore.

Q. Sir? A. The physical movement is broken at Baltimore and he cannot get a through bill of lading. We distinctly say so.

Q. I understand that, but so far as the shipper is concerned he can get a continuous carriage from Detroit to Miami by this plan, can't he? A. As far as the shipper is concerned—

Q. Then there is an arrangement for a continuous carriage so far as the shipper is concerned, isn't there? A. I shouldn't say so, no, sir.

Q. Have I got to go all over that again? A. I hope not.

Q. Well, you say in one breath that a shipper can ship, and you say there is a plan by which he can ship in that way and I ask you once more then, doesn't all this mean that so far as the shipper is concerned there is an arrangement by which he can ship automobiles from Detroit to Miami without his intervention at Baltimore?"

And then and there counsel for the Respondent objected to the last question and the Court sustained his

objection, on the ground (among others) that the question was ambiguous in not distinguishing between an arrangement between the rail carrier and the shipper on the one hand; and between the rail and water carriers on the other hand, and that the question tended to "befuddle the witness," and also had in substance been previously answered, to which action of the Court in sustaining the Respondent's objection to this question and in not permitting it to be asked and answered, the Peti-
(101) tioner then and there excepted and prays the Court to sign and seal this, the Petitioner's Eighth Bill of Exceptions, which is accordingly done this 17th day of May, nineteen hundred and twenty-nine.

WILLIAM C. COLEMAN (Seal),
United States District Judge.

PETITIONER'S NINTH BILL OF EXCEPTIONS

WHEREUPON after the evidence set forth in the Petitioner's Eighth Bill of Exceptions, which is hereby referred to and made a part hereof as fully as though incorporated herein at length, the said witness continued his testimony as follows:

"Q. A shipper then can ship his automobiles from Detroit to Miami without doing anything at Baltimore?

Mr. Chesnut: I object to that, sir.

Mr. Woodcock: Over the Munson Line.

Mr. Chesnut: I object to that. It is an unfair summation of the testimony up to the present time.

The Court: Without doing anything?

Mr. Woodcock: At Baltimore, sir.

The Court: He has already answered that, it seems to me, several times, but I will allow the question once more. I think it has already been covered.

A. In a physical sense he does not have to interfere
(102) at Baltimore.

Q. (By Mr. Woodcock) Well, you say in a physical sense he doesn't have to interfere, how does he interfere then, if not in a physical sense?

Mr. Chesnut: I object to it because he has answered it three or four times.

The Court: I will permit the question.

The Witness: I believe the agent of the Munson Line testified yesterday that he gets letters of instructions from the shippers as to the ultimate forwarding, and that they follow those instructions.

Q. (By Mr. Woodcock): Does the shipper do anything at Baltimore? A. With us?
Q. With anybody? A. I do not know. I can only answer for the Baltimore & Ohio Railroad Company.

Mr. Woodcock: That is all.

RE-DIRECT EXAMINATION

By Mr. Chesnut:
Q. Just a question or two, Mr. Couse. Colonel Woodcock has asked you a number of questions with regard to collection of freight charges and so on. Do you know what is the practice of the Munson Line with regard to the order of payment, first, to your railroad in relation to the time of collection from the ultimate consignee of the whole freight?

Mr. Woodcock: I object to that as being clearly beyond the knowledge of the witness. He is asking this witness about the Munson Line now. I object. If (103) he knows, all right.

The Court: I will permit the question.

A. I can only speak for the Baltimore & Ohio Railroad. I can not speak for the Munson Line.

Q. (By Mr. Chesnut): I understand. Let me make that question even plainer. Do you know the practice

of the Munson Line with regard to the relation of the time of payment to the Baltimore & Ohio Railroad Company of its freight and the collection of the whole freight from the consignee.

Mr. Woodcock: I object for this additional reason, that the defendant has put in evidence here in tabulated form of just exactly when those payments were made. Now, he can not vary his own testimony.

Mr. Chesnut: I am not seeking to vary it. I am trying to clear it.

The Court: I will permit the question.

Q. (By Mr. Chesnut): Do you know the practice of the Munson Line with regard to whether it pays you irrespective of whether it collects from the consignee in Florida? A. That is outside of my jurisdiction.

Q. Now, another answer that you gave to Colonel Woodcock was that your end of the contract ended at Baltimore when you made delivery at Baltimore? A. Yes.

Q. Have you any responsibility for the shipment beyond Baltimore?

Mr. Woodcock: That is purely a legal question, your Honor. That is purely a legal question. I rather think (104) that is a question for your Honor to determine from the language of this bill of lading.

Mr. Chesnut: I would like to say something about it because Mr. Woodcock asked this witness—

The Court: I will sustain the objection.

Q. (By Mr. Chesnut). You are familiar with the practice under the Carmack amendment about liability for any damage to a through shipment on the initial carrier, are you? A. I think I am.

Q. In cases of claim for damages to shipments that come by the Baltimore & Ohio Railroad to Baltimore, and go by the Munson Line to Florida, if the damage

occurs on the Munson Line, is it the practice of the Baltimore & Ohio to entertain those claims?"

Mr. Woodcock: I object. He could not vary a law or a legal responsibility by any practice, and if there is any possible relevancy of that here, I can not see it.

The Court: I will sustain the objection.

Mr. Chesnut: That is all. Thank you very much.

(Examination of witness concluded)

Mr. Chesnut: Colonel, in an effort to shorten the case as much as possible, I am going to be very brief with this witness. My idea is we have covered the ground with Mr. Couse from the Baltimore & Ohio Railroad Company, and I am just putting on the Pennsylvania man and the Western Maryland man to say whether there is any difference from their end of the line.

Mr. Woodcock: I am always brief, if that is what you are suggesting."

Thereupon **William F. Emrich**, a witness of lawful age, (105) produced on behalf of the Respondent, having been duly sworn, testified that he was with the Pennsylvania Railroad Company in Baltimore, Canton, in the office of the freight agent and that he had been in Court all day yesterday and today. He is in the office of the export clerk at Canton, while Mr. Couse is head of some other Department of the Baltimore and Ohio Railroad. He is somewhat familiar with the course and business practice in shipments of merchandise that come by the Pennsylvania Railroad to the Munson Line. He had heard Mr. Couse's testimony as to the practice prevailing with respect to that class of traffic. The handling of the traffic under the conditions mentioned by Mr. Couse in his testimony by the Pennsylvania Railroad is similar to what he had described for the Baltimore and Ohio Railroad, except in this respect, that everything the Pennsylvania delivers to the Munson Line is

lightered to them and not put alongside in railroad cars. This is because the Pennsylvania Terminal is on one side of the harbor and the Baltimore and Ohio's is on the other, so that where the ship docks at Curtis Bay, the Pennsylvania would have to lighter from its terminal over there, but in all other respects it is the same practice.

The Pennsylvania Railroad does not make, to the witness' knowledge, any arrangement with the Munson Line for through shipments beyond Baltimore to Florida Ports. It only delivers to the Munson Line on local bills of lading. The Pennsylvania Railroad does not (106) issue any through bills of lading from inland points through Florida to the Munson Line for Florida. It is local business on local bills of lading.

He had heard Mr. Couse's testimony about the business practice in that regard and it is substantially the same with the Pennsylvania Railroad—practically the same thing.

CROSS EXAMINATION

The witness recognizes one of the bills of lading offered in evidence as a Pennsylvania Railroad bill of lading. The Pennsylvania Railroad does not get out a circular similar to the one Mr. Couse brought. The Pennsylvania gets out instructions, but not to shippers, that the witness knows of. He has some of those instructions with him. The witness produces his file, that is, the division freight agent's, Mr. Veit's, file, whose office issued these instructions.

Mr. Chesnut: Here is one that does relate.

Mr. Woodcock: Well, I think this is relevant.

Mr. Chesnut: This is 1928.

Mr. Woodcock: Is this a copy of it? A. Yes, I think it is the same one.

Mr. Woodcock: I will offer this in evidence as a document the defendants produce without being bound by it.

(107) Mr. Woodcock: This document is on the letter head of the Pennsylvania Railroad, office of Division

Freight Agent, Baltimore, Maryland, March 21, 1928. Desk A, File 51-G-51. "All division freight agents, all district freight agents, all agents—Baltimore Division. Circular Letter No. 463. Gentlemen: For your information and guidance I quote below contents of letter received from the Munson Steamship Line, under date of (108) March 29, 1928: 'This is to advise that the Munson Steamship Line will be unable to handle any freight coastwise from Baltimore to Jacksonville or Miami, arriving on any kind of a through billing. In other words, the rail bill of lading or arrival notice should carry the freight consigned in care of the Munson Steamship Line at Baltimore, and indicate as marks or numbers in the body of the receipt, the name of the consignee and destination to which the freight is desired to be reforwarded. Shipper should also notify this office, furnishing full shipping instructions and we, in turn, will issue ocean bill of lading against which only the delivery at destination will be made. In the event of your agent signing bill of lading at an interior point showing consignment through to destination via Munson Line, we will serve notice that the billing is not acceptable and we will be unable to handle the shipment until corrected billing is tendered, as above outlined.' As a matter of information would advise that the Department of Justice Agents recently have been conducting rather a vigorous investigation in this direction, and it behooves us to bring the matter forcibly to the attention of those concerned, since if the errors are persistent, serious consequences may result. Please call of all concerned to the importance of complying with those instructions with respect to signing through bills of lading when for furtherance in connection with intercoastal lines and certain coastwise companies who do not file tariffs with the Interstate Commerce Commission. Yours truly, W. P. Veit, Division Freight Agent."

Then copies to Mr. E. S. Neilson, Mr. W. L. Newberrey, Mr. A. B. Scott, Munson Steamship Line, Keyser Building.

(109) Q. Now, the Munson Steamship Company then wrote to the Pennsylvania Railroad, didn't it? A. According to that they did.

Q. Well, then, before this circular letter came out, which is dated March 31, 1928, some agents had been issuing through bills of lading over the Munson Line.

Mr. Chesnut: I object to that, your Honor.

Q. (By Mr. Woodcock): Had they not?

Mr. Woodcock: That is what the letter says.

Mr. Chesnut: Does it say that now, Colonel? Let me see it.

Mr. Woodcock: Well, you read it.

Mr. Chesnut: Your Honor will see this is a letter date March 31, 1928—

The Court: I will sustain the objection because we are not trying the other lines anyway—they are not here in this case—and I think the question is immaterial. The letter will speak for itself.

Q. (By Mr. Woodcock): Taking this Clark Dredging Company, Miami, Florida, this circular of instructions says: "And indicate as marked for numbers in the body of the receipt the name of the consignee and destination to which the freight is desired to be reforwarded." A. That was done exactly in that case.

Q. That is exactly what was done there. You indicate as marked— A. For the railroad's information.

Q. Where it is ultimately to go? A. Yes, sir.

(110) Mr. Woodcock: I want to show this to the jury: The letter says: "And indicate as marks or numbers in the body of the receipt the name of the consignee and destination to which the freight is desired to be reforwarded," and the witness says that was exactly what was done there.

Q. It is possible, then, for this shipper here who started his shipment at Lancaster, Pennsylvania, to move his freight from Lancaster down to Miami without coming down here to Baltimore and transshipping it, is it?

A. He would not have to come down here, but he would have to write to the Munson Line about it.

Q. But he doesn't have to come down here, does he? A. I do not see why he should.

Q. No, and there has been an interchange of views between the Pennsylvania Railroad and the Munson Line as to how this can be arranged so that the shipper may forward through one continuous shipment down to Miami from Lancaster, Pennsylvania.

Mr. Chesnut: I object.

The Court: I will permit the question.

Q. I say there has been some interchange of views, as shown by this letter, between the Munson Line and the Pennsylvania Line as to how it may be arranged for the convenience of the shipper so that he may forward from Lancaster down to Miami without having to come down here to Baltimore and transship it? A. Yes, sir.

Q. Your answer is yes, sir? A. Yes.

Mr. Woodcock: That is all, thank you.

RE-DIRECT EXAMINATION

(111) By Mr. Chesnut:

Q. I understand that you do not issue any through bills of lading by way of the Munson Line? A. That is for Florida points.

Q. You know, as a matter of fact, that the Munson Line issues its own billing here in Baltimore? A. I have seen them.

Q. Where does your journey end? A. At Baltimore, Canton.

Q. At Baltimore? A. At Baltimore, Canton.

RE-CROSS EXAMINATION

By Mr. Woodcock:

Q. You do go a little further, you put the stuff on the lighter and deliver it to the ship? A. That is the end of the rail connection.

(Examination of witness concluded.)

THEREUPON **Winfield S. Burton**, a witness of lawful age, produced on behalf of the Respondent, having been duly sworn, testified as follows:

He has been general foreign freight agent of the Western Maryland Railway for about five years and was with the Western Maryland before that. He was not in Court yesterday, having been out of town until just a few minutes ago.

He is familiar with the class of business that is the subject of rail carriage commodities by the Western Maryland to Baltimore where they are delivered to the Munson Line as agent of the shipper to be carried to (112) Florida points. The Western Maryland Company has not any common arrangement with the Munson Line for a continuous through carriage. When the Western Maryland issues bills of lading for goods to be brought to Baltimore to be delivered to the Munson as agent of the shipper, there has been no prior arrangement between it and the Munson Line as to a through carriage. Its bills of lading are not through bills of lading, they are consigned to the port only.

"Q. Now, for instance, in the Fischer shipment which moved from York, Pennsylvania, on the Western Maryland bill of lading—I think this is a copy of it shown here? A. That is right.

Q. The suggestion is made that the notation in the descriptive box, "For Charles C. Fischer, Miami, Florida," in some way makes that a through bill of lading. Are you familiar with the customs in regard to bills of lading? A. Yes, sir.

Mr. Woodcock: He can not answer the effect of that notation. That is a legal question.

The Court: I will sustain the objection.

The shipper put the notations on the bill of lading. In the custom of the business that is simply as a matter of information, that is, information for the Western Maryland Railway. The destination of the shipment as

is shown on the bill of lading is Baltimore. The Western Maryland has no arrangement with the Munson Line.

Cross Examination

The witness stated that the notation is a matter of information and that is true about everything that is on the bill of lading.

(113) "Q. But the information is as to where the car of fertilizer is going, isn't it—that is what the information is. A. As far as we are concerned the car is going to Baltimore, which is shown as the destination of the shipment.'

Q. Pardon me. You know perfectly well after looking at the bill of lading that car of fertilizer is going to Miami, Florida? A. It may or may not. All I know is the destination of that car, as far as we are concerned, is Baltimore.

Q. Now, you go so far as to lighter it around to the ship of the Munson Steamship Company, don't you? A. Yes.

Q. And you don't charge them anything for doing that? A. Not if the rate is nine cents per 100 pounds or higher.

Q. It seems to me if you read that on there, that it is going to Charles C. Fischer, Miami, Florida, and you lighter the freight around to the steamship and tie it up alongside of the steamship, you are pretty well aware that that carload of fertilizer is not going to stop at Baltimore. A. We will admit that.

Q. Why, of course, and you know it is going on to Miami? A. We know it is going to the Munson Line and they are going to take it some place, where we do not know, because we have no instructions from the shipper to carry it beyond Baltimore.

Q. You say this is information, what information (114) does that convey? A. That may be the marks on the bags, as far as I know.

Q. The Pennsylvania Railroad says to put down under special marks where it is going. Do you have a similar instruction as that? A. Not that I recall.

Q. Have you any instructions at all like the Baltimore

& Ohio Railroad has or the Pennsylvania Railroad has about these shipments? A. Not that I recall.

Q. No written instructions—are they all verbal? A. There might be some letters out on it, but I mean there is no circular that I can recall.

Q. How do you know then where to take the goods? Why, these particular cars go on lighters and go around to the MUNLISTO, or some other ship of the Munson Steamship Company. A. Because they are consigned "care of the Munson Line". We notify them that the cars are here and they tell us when and where they want them.

Q. I am persistent on this. The Pennsylvania Railroad and the Baltimore & Ohio Railroad have a circular suggesting that when it is to go further than Baltimore they mark it on the bill of lading, in the body of the bill of lading should appear notations indicating ultimate destination to Florida. The Pennsylvania Railroad does the same thing. It says, "Put it down under special marks." Have you such similar instructions? A. I do not recall any. We may have, but I do not recall any.

Q. Well, the shipper has the advantage of being able (115) to ship from, in this instance, York, Pennsylvania, to Miami, without coming down to Baltimore and receiving the shipment and forwarding it himself, doesn't he? A. It all depends on his arrangement with the Munson Line.

Q. I may show you a few more documents in connection with this Fischer Exhibit. Is Mr. Eckhardt the agent of the Western Maryland at Port Covington. A. He is.

Q. Apparently the Munson Line, according to that letter, paid him the freight for this shipment, didn't it? A. Yes, sir.

Q. You trusted the Munson Line for your freight and then the Munson Line collected from the ultimate consignee? A. Well, I do not know whether the Munson Line held out the charges on us until they collected from the consignee. The freight bills are sent to the Munson Line as soon as they are notified the freight has arrived and they pay the freight charges at or about the time their ship leaves the port.

Q. All that I am suggesting is that you extend credit

to the Munson Line for this kind of shipment. A. For any kind of shipment. They have a general credit with us.

Q. That is what I say. A. Yes, sir.

Q. They have a general credit with you? A. Yes, sir.

Q. So that the shipper doesn't have to come down (116) here from York and pay you the freight and then turn his shipment over to the Munson Line? A. He doesn't have to pay us the freight, no, sir.

Q. Well, then, of course you understand that this shipment did move on to Miami? A. I do not know where it moved. We turned it over to the Munson Line and we were through with it then.

Q. I thought I showed you the letter there which says you were paid freight by the Munson Line. Here is the Munson Line bill of lading and here is the freight bill that you rendered the Munson Line, $43.76. Here is your waybill. Again you put on your waybill that it is going to Charles C. Fischer, Miami Florida? A. It shows its destination as Baltimore, though.

Q. Why do you put on your waybill, "For Charles C. Fischer? A. Because it is on the shipping instructions given us by the shipper.

Q. Why is it on the shipping instructions—it must have some reason for being there. A. It has some reason.

Q. That is to tell all who handle that shipment on the Western Maryland that that shipment is going to Miami, Florida? A. As far as we are concerned, the shipment is consigned to Baltimore.

Q. Pardon me. You know more than that because you handle it differently, don't you? You put it on your lighter and take it around to the Munson Steam- (117) ship Company. A. We do.

Q. I want to make it clear: You do know something more than that it is going to Baltimore. A. I say the Western Maryland interest stops at Baltimore. We have nothing further to do with it after the shipment reaches here and is delivered to the Munson Line. We have no arrangement to carry it beyond or any understanding of any kind.

Q. You allow the Munson Line to collect the freight

on this shipment for you, don't you? A. We collect our freight charges from them.

Q. That is simply another way of saying that you allow the Munson Line to collect the freight charges for you.

Mr. Chesnut: I object to that question. That is not what the witness says. You allow the Munson Line to collect for you—what the witness says is he renders his freight bills to the Munson Line and they pay in due course.

Mr. Woodcock: He also said he extended a general credit to the Munson Line, so I think it goes to the same thing.

Mr. Chesnut: I distinctly do not think so, Colonel, or I would not have made the point.

The Court: I sustain the objection.

Q. (By Mr. Woodcock) Do you collect the freight, or does the Munson Line collect the freight? A. From whom?

Q. From the shipper, from the consignee. A. Well, I do not know whether they collect their freight from the consignee or from the shipper. We collect our charges from them.

Q. You do not collect your charges from the shipper? (118) A. Not unless the charges are prepaid.

Q. Or the consignee? A. No, sir.

Q. Now, you are familiar with this incident, aren't you, and that was not a prepaid case, the Fischer shipment? A. No, sir, that is a collect shipment. We collected our freight charges from the Munson Line.

Q. Then you do have some further interest in this shipment after it gets to Baltimore, don't you? A. Only in making delivery to the Munson Line and collecting our freight charges.

Q. With those two exceptions— A. When we do that, we are through with the shipment.

Q. Well, then, as a result of this action on your part, and the action on the Munson Line's part, a shipper up at York, Pennsylvania, can ship to Miami, without

having to come down to Baltimore and transship? A. That would depend entirely on his arrangement with the steamship people.

Q. Well, whatever his arrangement was, the net result is that he doesn't have to come to Baltimore, isn't that true? A. I still say that it depends on his arrangement with the steamship people.

Q. Well, I suppose it does, as the result of his arrangement with the steamship company and your bringing the goods as far as Baltimore, he could actually ship from York to Miami as a continuous shipper, couldn't he? A. He may have some arrangement with the steamship people that would enable him to do that.

Q. Well, in this case he actually did it, didn't he? (119) A. I don't know. I know the shipment was turned over to the Munson Line and we collected our freight charges from them.

Q. And he didn't come down here and take up the goods from the Western Maryland and ship them again you know that, don't you? A. I know that, because the bill of lading carried the shipment to the Munson Line boats.

Q. Then as a result of all this he can ship from York to Miami, and it was a very convenient thing for him to do, as a continuous shipment. A. I again have to repeat what I said before, that it all depends on his arrangement with the Munson Line. If he has no arrangement with them he would naturally have to come to Baltimore to make his arrangements.

Q. What is that, if he had no arrangement? A. If he had no arrangement he would have to come to Baltimore and make some arrangement.

Q. There would be one more element in it. If you had not been willing to trust the Munson Line for the freight he would have had to come here, too? A. No, sir, not necessarily so. We could send him the freight bill at York and collect it from him there.

Q. Is it your ordinary custom to trust a shipper down here at Baltimore and send the freight bill up to York? A. We would have held the shipment until he paid the charges.

Q. He would not have gotten the shipment on to (120) Miami then, would he? A. I do not know.

Q. If you were going to hold it until he pays the charges? A. If he paid his charges promptly there is no reason why it should not go on through.

Q. On this particular shipment, as a result of your convenience in extending credit, and of his arrangement with the Munson Line, he was able to have his car of fertilizer go through continuously, wasn't he? A. I assume he was.

RE-DIRECT EXAMINATION

By Mr. Chesnut:

Q. Do you give any preferential treatment to the Munson Line as compared with other steamship companies as to the time of payment of freight bills? A. No, sir.

Mr. Chesnut: Thank you, Mr. Burton.

RE-CROSS EXAMINATION

By Mr. Woodcock:

Q. Now, you do give a preferential treatment to the Munson Line as compared to just ordinary Tom Jones in Baltimore City, don't you? A. No, sir, everybody is treated alike.

Q. Well, now, you do not mean that, do you? Does not the law require you to collect freight within four days? A. Yes, sir.

Mr. Chesnut: Four days from what?

Mr. Woodcock: Let him answer that, four days from what?

A. From the time of delivery.

Q. You delivered this shipment to the Munson Line (121) on the 12th of December and your freight wasn't paid until the 21st of December, so that is more than four days, isn't it? A. It is more than four days.

Q. Well, then, the Munson Line is treated differently from just the ordinary citizen in Baltimore? A. It appears so in that instance.

Q. You yourself said that they had a general credit with you. A. General credit.

Q. Every shipper doesn't have a general credit, you are not allowed to give it to them under the law, isn't that true. A. If his standing and financial rating is all right there is no reason why he shouldn't have it.

Q. You can not trust him longer than four days, though? A. No, sir.

Q. If you do, you are discriminating and breaking the law yourself and liable to a penalty? A. Yes.

Q. (By Mr. Chesnut) You do not collect every bill within four days, do you—There are lots of them outstanding beyond that? A. There are discrepancies that occur that prevent the bills from being paid promptly.

Q. Naturally you want to collect them promptly? A. Yes.

Q. The point is, you had no arrangement or agreement with the Munson Line to give them any unusual (122) credit? A. No, sir.

Q. (By Mr. Woodcock) What do you mean by saying you do extend them a general credit, then? A. I mean they have a credit where they can get freight without paying the charges until we render the bill.

Q. That is different from the ordinary shipper because, to do that with the ordinary shipper, you would be liable to a criminal penalty? A. Any shipper has a credit.

Q. For four days, but the Munson Line has a different kind of a credit from that. A. No, they have not. As I say, there may be exceptions because there are corrections occuring in freight charges all the time that necessitates settlements being held up.

Q. Do you treat the Munson Line just as you do any other steamship company? A. Any other transportation company.

Q. Any other transportation company that receives freight from you? A. Steamship company, I should say.

Q. Steamship company. You treat them just like you do the Merchants & Miners? A. No, sir, with the

Merchants & Miners we have a through billing arrangement.

Q. Do you collect your freight in the same way from the Merchant & Miners? A. I do not know whether that is collected by his agent or whether it is an audit (123) settlement.

Q. Any way, there is a credit arrangement? A. If there is an audit settlement it is settled at the end of each month and not collected by the agent, as it is delivered.

(Examination of witness concluded.)"

THEREUPON **Edward K. Morse**, a witness of lawful age, produced on behalf of the Respondent, having been duly sworn, testified as follows:

He is the general freight traffic manager of the Munson Line with headquarters in New York, living in Plainfield, New Jersey, and having been connected with the Munson Line since 1909.

The Munson Line is an old New York corporation—a relatively large steamship line. Generally it has under its operation in the neighborhood of one hundred steamers. The greater part of its business is international. It has a line to South America, a number of lines to Cuba, and does a general tramp business almost anywhere. He has been manager of this Department for the Munson Line about five years. He was with the Line before that and is familiar with the customs and practices of the Line that have anything to do with his part of the work. The Munson Line is a stock corporation and is not owned or controled by any Railroad Company or other Steamship Company and it is an independent line. It is not affiliated with any rail carriage system such as the Morgan Line is with the Southern Pacific. It is what is called a really independent corporation.

He has been in Court the last two days and has heard (124) Mr. Corrier testify about the matters of coastwise shipment by the Munson Line from Baltimore to

Florida ports. Mr. Coria is his local manager. His knowledge covers the same subject matter that Mr. Coria covered, though he probably does not know all that Mr. Coria knows about Baltimore detail, but he knows in general the operation. He is in general charge of all of the business from American ports to American ports. He does not have anything to do with the South American line. He knows as a matter of policy that the Munson Line makes no arrangements with rail carriers or carriage of goods partly by rail and partly by water between the American ports. Export business is quite another matter. In export business the line has more or less a joint arrangement imposed upon it by the Commission and the Shipping Board. But where the Line has the option of port to port business in America, it does not make these arrangements. It does not file any tariffs with the Interstate Commerce Commission, but does file them with the Shipping Board, as required by law.

He is familiar with the difference between a through bill of lading from an interior inland point to seaboard and beyond seaboard to another port and a local bill of lading for rail carriage to the port. His line does not accept for American ports from port to port merchandise for transportation on through bills of lading, because it is against the law for the line to do so unless and until it files tariffs. It is a matter of customary business generally and always is a matter of policy for the line to issue its own bill of lading at the port for the port to port shipment.

His Line pays the railroad freight as soon after it (025) receives the railroad's bill as the Line's routine permits. There is no relationship between the Lines collecting it from the consignee and the time the Line pays it to the railroad.

Intercoastal is that which goes through the Panama Canal in which his Line is engaged in a large way. Such is handled in the same way as the coastwise shipping under discussion. The intercoastal business is probably the larger portion of the American port to port shipping business.

He is familiar with the trade practices and customs of other shipping lines that are competitors of the Mun-

son Line to a more or less degree. He knows what is referred to as the intercoastal conference. It is an association of steamship lines in the intercoastal trade, formed under Shipping Board authority.

"Q. Are you a member and do you sit in at such conferences, or participate in them?"

To which question counsel for the Petitioner objected but the Court overruled the objection and permitted the question to be asked. To which action of the Court in permitting the above question to be asked, the witness, the Petitioner then and there excepted and prays the Court to sign and seal this, the Petitioner's Ninth Bill of Exceptions, which is accordingly done this 17th day of May nineteen hundred and twenty-nine.

WILLIAM C. COLEMAN. (Seal)
(126) United States District Judge.

PETITIONER'S TENTH BILL OF EXCEPTIONS

WHEREUPON after the evidence set forth in the Petitioner's Ninth Bill of Exceptions, which is hereby referred to and made a part hereof as fully as though incorporated herein at length, the said witness continued his testimony as follows:

That he is familiar with the general rules and regulations and practices of shipping companies that do not file tariffs with the Interstate Commerce Commission.

He is familiar with the uniform bills of lading issued by rail carriers under orders of the Interstate Commerce Commission and is also familiar with seeing notations in the descriptive portion of the bill of lading where they frequently appear.

CROSS EXAMINATION

Witness stated that he paid bills to the carriers as soon as his office routine permitted it and he does not know whether that is agreeable to the railroad companies.

"Q. They acquiesce in it, don't they? Have you ever had any protests? A. Yes, I have had railroads tell me to hurry it up in New York.

Q. Did the Western Maryland ever ask you to hurry it up? A. I do not come in contact with the end down here. You see, I am in New York.

Q. This practice has been acquiesced in for some (127) time, hasn't it? A. I do not know what practice you mean, what you mean by a practice being acquiesced in.

Q. Well, I mean if I ordered a carload of freight from York, Pennsylvania, shipped to Baltimore, the law would require me to pay for it within four days. That is one situation. Between you and the railroads there exists another situation by which they extend credit to you as long as it is convenient for your office routine to use that credit? A. I do not know that.

Q. You know you do not pay your bills, you know you do not pay the railroads the freight charges until it is convenient for your office routine to pay them? A. Our instructions to all agencies are to pay those railroad freight bills immediately. If there are cases where they do not pay them for a greater or lesser number of days, that is undoubtedly because of office routine, as far as we are concerned. Why the railroad may or may not insist on collection on a given day I do not know. Certainly, it is not as the result of any agreement to the contrary.

Q. Is it the result of acquiescence? A. I do not know what it is the result of. I suppose the railroads can fail in their routine just as we can."

And thereupon the examination of the witness was concluded.

Thereupon the Petitioner presented its first prayer of (128) instructions as follows:

"The Petitioner prays the Court to instruct the jury that if they believe from the evidence that the shipper on or about December 10, 1927, delivered merchandise to the Western Maryland Railroad Company at York, Pennsylvania, for which the Western Maryland

Railroad Company issued its bill of lading and shipping order offered in evidence by the Petitioner; and that the Respondent received the said merchandise in Baltimore from the Western Maryland Railroad Company, and thereupon forthwith transported it to Miami, Florida, by steamer and delivered it there to the consignee and collected the freight for the said shipment from the consignee at Miami, as shown on the freight bill offered in evidence by the Petitioner and remitted to the Western Maryland Railroad Company that part of the freight collected by it which represented the charges by the Western Maryland Railroad Company from New York to Baltimore, then this is evidence from which they may conclude that the said transportation by railroad and by water was used under a common arrangement for a continuous carriage or shipment, and if they shall so find then their verdict should be for the Petitioner."

But the Court refused to grant the said first prayer, to which action of the Court in refusing to give the aforesaid instructions to the jury, the Petitioner then and there excepted and prays the Court to sign and seal this, its Tenth Bill of Exceptions, which is accordingly done this 17th day of May 1929.

WILLIAM C. COLEMAN. (Seal).
United States District Judge.

THE PETITIONER'S ELEVENTH BILL OF EXCEPTIONS

Whereupon after the evidence set forth in the Petitioner's Tenth Bill of Exceptions, which is hereby referred to and made a part hereof as fully as though incorporated herein at length, the Petitioner offered its second prayer for instructions as follows:

"The Petitioner prays the Court to instruct the jury that if they believe from the evidence that it was the practice of the Respondent to receive at Baltimore from railroad companies shipments of merchandise for which the said companies had issued bills of lading containing thereon a direction as to the ultimate consignee, desti-

nation of the shipment, as well as the immediate destination, which ultimate destination was reached by the Respondent's steamers, copies of such bills of lading (129) in the form of shipping orders having been offered in evidence by the Petitioner, and for the Respondent forthwith to transport such shipments by steamers according to directions as to ultimate destination appearing on the said bill of lading or shipping orders, and to deliver the said shipment to the ultimate consignee, and to collect from said ultimate consignee the freight due the particular railroad company for its carriage to Baltimore, and that due it, Respondent, for the carriage from Baltimore to the ultimate destination, and to remit to the particular railroad company the freight collected for it, then this is evidence from which they may conclude that such transportation by railroad and by water was used under a common arrangement for a continuous carriage or shipment, and if they shall so find, then their verdict should be for the Petitioner."

But the Court refused to grant the said prayer, to which action of the Court in refusing to grant said prayer, the Petitioner then and there excepted and prays the Court to sign and seal this, the Petitioner's Eleventh Bill of Exceptions, which is accordingly done this 17th day of May 1929.

WILLIAM C. COLEMAN. (Seal)
United States District Judge.

THE PETITIONER'S TWELFTH BILL OF EXCEPTIONS

Whereupon after the evidence set forth in the Petitioner's Eleventh Bill of Exceptions, which is hereby referred to and made a part hereof as fully as though incorporated herein at length, the Petitioner offered its third prayer for instructions as follows:

"The Petitioner prays the Court to instruct the jury that, according to the undisputed evidence in this case, shipments of merchandise were transported in the Respondent's steamer under a plan which resulted in a continuous carriage or shipment of this merchandise

from inland points to the destination of the steamers; that in so far as the continuity of the carriage or shipment is concerned the plan did not differ from that where a through bill of lading was issued by the initial carrier, and that they are warranted in finding, therefore, that a common arrangement, express or implied, existed between the Respondent and the connecting railroad companies, the common arrangement with continuous passage referred to in the law, meaning no more than a plan which the Respondent and connecting carriers had either adopted expressly, or impliedly, or acquiesced in, whereby there might be a continuous carriage or shipment; if they shall so find, the verdict should be for the Respondent."

(130) The Court refused the said Petitioner's third prayer, which action of the Court in refusing the said prayer, the Petitioner then and there excepted, and prays the Court to sign and seal this, the Petitioner's Twelfth Bill of Exceptions, which is accordingly done this 17th day of May, 1929.

WILLIAM C. COLEMAN (Seal),
United States District Judge.

THE PETITIONER'S THIRTEENTH BILL OF EXCEPTIONS.

Whereupon after the proceedings set forth in the Petitioner's Twelfth Bill of Exceptions, which is hereby referred to and made a part hereof as fully as though incorporated herein at length, the Petitioner offered its fourth prayer for instructions as follows:

"The Petitioner prays the Court to instruct the jury that if they find that the shipments described were originally intended by the shipper to move via the rail carriers from the inland points of origin to the Port of Baltimore, thence via the vessels of the Munson Line to ultimate destination in Florida, and that this intention was carried out by the respective carriers with no more delay at Baltimore than customarily and ordinarily encountered in the process of transferring prop-

erty from rail carriers to water carriers, then they should find, irrespective of the forms of billing employed, that said shipments were transported partly by railroad and partly water under a common arrangement for continuous carriage and shipment, and they should find for the petitioner. Southern Pacific Terminal Co. v. I. C. A., 219 U. S. 498. T. & N. O. R. R. v. Sabine Trans. Co. 227 U. S. 111."

The Court refused said Petitioner's fourth prayer, to which action of the Court in refusing the said instruction, the Petitioner then and there excepted, and prays the Court to sign and seal this, its Thirteenth Bill of Exceptions, which is accordingly done this 17th day of May, 1929.

WILLIAM C. COLEMAN (Seal),
United States District Judge.

THE PETITIONER'S FOURTEENTH BILL OF EXCEPTIONS.

(131) Whereupon after the proceedings set forth in the Petitioner's Thirteenth Bill of Exceptions, which is hereby referred to and made a part hereof as fully as though incorporated herein at length, the Petitioner offered its fifth prayer for instructions as follows:

"The Petitioner prays the Court to instruct the jury that a common arrangement for continuous carriage of property within the meaning of the statute here involved (Sec. 1 of the Interstate Commerce Act) is an ordinary physical arrangement whereby the property moves continuously in the possession of the respective carriers from the point of origin on the rail line to the ultimate destination on the water line at which the shipper intended the property to be finally delivered and I instruct that the word continuous is meant that the shipment moves on toward the final destination intended by the shipper to be reached with no more interruption of movement than is necessary or incident to its handling, inter-change with, or delivery at Baltimore to the Respondent by the rail carrier, or such other interruptions

of movement as are customarily and ordinarily encountered in the transportation of property by common carriers.

That they may find that such arrangement exists even though they find, as the evidence in this case indicates, that the rail carriers and Respondent have not entered into any express written contract or agreement with purpose thereby to create in writing a common arrangement for continuous carriage of property.

That they may also find that such arrangement exists without and in the absence of the issuance of a through bill of lading or the publication and filing with the Interstate Commerce Commission by Respondent and the rail carriers of a joint through rate."

The Court refused said Petitioner's fifth prayer, to which action of the Court in refusing the said instruction, the Petitioner then and there excepted, and prays the Court to sign and seal this, its Fourteenth Bill of Exceptions, which is accordingly done this 17th day of May, 1929.

WILLIAM C. COLEMAN (Seal),
United States District Judge.

THE PETITIONER'S FIFTEENTH BILL OF EXCEPTIONS.

Whereupon after the proceedings set forth in the Petitioner's Fourteenth Bill of Exceptions, which is hereby referred to and made a part hereof as fully as though incorporated herein at length, the Petitioner offered its (132) fifth prayer for instructions as follows:

"The Petitioner prays the Court to instruct the jury that if they believe from the evidence that the method by which the shipments in question were transported by rail and by the rail carriers delivered to and transported by the Respondent constituted a physical arrangement established by custom, practice and usage, under and by means of which the shipments which they have heard described could be and were actually transported in con-

tinuous movement in possession of the respective rail-carriers and respondents as and to the ultimate destinations intended by the shipper, then they should conclude that the transportation in question was under a common arrangement for a continuous carriage within the meaning of the statute which I have mentioned, irrespective of the absence or lack of an express agreement between the rail carriers and Respondent."

The Court refused said Petitioner's sixth prayer, to which action of the Court in refusing the said instruction, the Petitioner then and there excepted, and prays the Court to sign and seal this, its Fifteenth Bill of Exceptions, which is accordingly done this 17th day of May, 1929.

WILLIAM C. COLEMAN (Seal),
United States District Judge.

THE PETITIONER'S SIXTEENTH BILL OF EXCEPTIONS.

Whereupon after the proceedings set forth in the Petitioner's Fifteenth Bill of Exceptions, which is hereby referred to and made a part hereof as fully as though incorporated herein at length, the Respondent offered its first prayer for instructions as follows:

"The respondent requests the Court to instruct the jury that the United States has offered no evidence in this case legally sufficient to show that the respondent was engaged in transportation partly by rail and partly by water under a common arrangement for a continuous shipment, and therefore, the verdict of the jury must be for the respondent."

The Court granted said Respondent's first prayer, to which action of the Court in granting the said instructions, the Petitioner then and there excepted, and prays the Court to sign and seal this, its Sixteenth Bill of Exceptions, which is accordingly done this 17th day of May, 1929.

WILLIAM C. COLEMAN (Seal),
United States District Judge.

CHARGE TO THE JURY

(132a) Coleman, J.:

Gentlemen of the jury, I feel obliged at the conclusion of the evidence in this case to instruct you that the Government has offered no evidence legally sufficient to show that the respondent, the Munson Line, was engaged in transportation, partly by rail and partly by water, under a common arrangement for a continuous carriage or shipment and that, therefore, your verdict must be for the respondent. In other words, I feel it my duty, on the evidence, to direct your verdict in favor of the respondent.

It is my duty, however, to explain my reasons for so doing. Congress has seen fit to circumscribe the jurisdiction of the Interstate Commerce Commission over water carriers. The Act expressly applies to all common carriers engaged in interestate transportation of passengers or property as opposed to transportation wholly within one State, when such interstate "transportation is wholly by rail, or partly by rail and partly by water, when both are used under a common control, management or arrangement for a continuous carriage or shipment." That is Sub-Section 1-a of the Act (49 U. S. C. A. Sec. 1A). Another section of the Act (Sec. 15, par. 3, 49 U. S. C. A. Sec. 15, par. 3) authorizes the Commission to establish through rates and maximum joint rates applicable to the transportation of property where one of the carriers is a water line, but the Commission is expressly forbidden to establish any route classification or practice, or any rate, fare or charge when the transportation is wholly by water. That is to say, there is no jurisdiction over port to port rates as such. In the very nature of things water transportation is less standardized and uniform than is rail transportation. There has never been the inherent need or ability to apply the same general requirements. At least, those seem to have been some of the fundamental considerations that moved Congress to legislate as it did. But whatever may have been the motive, that is what Congress did.

(132b) The principal objects of the Interstate Com-

merce Act are to secure just and reasonable charges for transportation, to prohibit unjust discrimination in the rendering of like service under similar circumstances and conditions, to prevent undue or unreasonable preferences to persons, corporations or localities; to prohibit greater compensation for a shorter than for a longer distance over the same line, and to abolish combinations for the pooling of rates.

The sole question in the present case is whether the Munson Line is taking part in transportation with rail carriers under a common arrangement for a continuous carriage or shipment. If it is, it is subject to the Interstate Commerce Act, and among the requirements imposed upon all carriers subject to that Act is that they shall file their tariffs with the Commission, which the Munson Line has not done, and it is the refusal to do this which forms the basis of the Government's complaint in the present case. There is no claim that the Munson Line is engaged in transportation under a common *control* or *management* with the rail carriers, but merely under a common *arrangement*. That is to say as you have seen from the evidence, there is no claim that the Munson Line was other than an independent steamship line.

What do these words "common arrangement" mean? The simplest, most usual case of common arrangement arises when goods are shipped by two or more connecting carriers under a through bill of lading from a point in one State to a point in another under an agreed division of the freight rate. However, a common arrangement may be manifested otherwise than by a through billing, because, obviously, the mere form or method of billing can not destroy the real character of the transaction, and thereby deprive the Commission of the authority which Congress intended it should have. In other words, we must look through form to substance.

It is to be borne in mind that if the Government is to succeed in the present case, the evidence must disclose two things: (1) that the arrangement for the carriage or shipment is a common one, and (2) that that carriage or shipment is continuous. By "common" the (132c) Court thinks must be meant an arrangement between the two kinds of carriers namely, the rail carrier

and the water carrier, not merely an arrangement between the shipper and one of the carriers; and, further, that this mutual arrangement must contemplate some participation by both carriers in a continuous carriage or shipment, which is the subject of the arrangement. This must be true from the very object of the Interstate Commerce Act itself which, summarizing what the Court has already said about its objects, is to protect the public against unreasonable and discriminatory rates.

Congress, as we have just seen, has not seen fit to give to the Commission jurisdiction over port to port rates as such, but has merely said, as the Court construes the Section of the Act now under consideration, that if the port to port rate is to be participated in by a rail carrier, or if the rail and the water carrier are so interrelated by control or management that the rail carrier would directly or indirectly profit from such rate, then jurisdiction must attach because, otherwise, it would vitiate the power of the Commission adequately to regulate all of the charges of that very class of carriers which the Act expressly places under the jurisdiction of the Interstate Commerce Commission.

So turning to the word "continuous," its use must be predicated upon the assumption that both the rail and the water carrier participate in some way in the *entire* movement. It does not mean continuous in a *physical* sense. It is admitted that neither under a through billing, nor under the method here in question, is the participation physically continuous, due to the transhipment in both instances at Baltimore. Even though in both instances the shipment be construed as equally continuous, it is simply tantamount to saying that there is in each case one interstate movement, but as we have just seen, only a very limited class of interstate movement involving water carriage is under the Act.

Now, what are the facts in the present case? The rail carrier to Baltimore issues its bill of lading to the (132d) shipper, showing the destination of the shipment to be Baltimore. In due course of transportation the merchandise is delivered to the Munson Line. The bill of lading is surrendered to the rail carrier. The freight of the rail carrier is paid by the Munson Line, which then issues its bill of lading to the shipper for

carriage of the goods by water from Baltimore to the point of destination. The Munson Line is instructed by separate written advice from the shipper as to what disposition to make of the goods, and the Munson Line issues its own separate bill of lading accordingly. The freight rate for the transportation of the goods by rail to Baltimore is fixed and determined by the tariffs and the separate bill of lading issued by the rail carrier, and is paid by the Munson Line at the request of the shipper to the rail carrier, upon presentation of bills for the freight by the rail carrier. There is no evidence in the present case of any agreement of any kind, verbal or written, existing between the shipper or the Munson Line, or both, with the rail carrier, except as is embraced in the rail carrier's bill of lading to which, as I just explained, the respondent is not a party, and except, as is also embraced in the related documents, such as the waybill and so forth. That is to say, there is no agreement in evidence in this case between the rail and water carrier with regard to either a through bill of lading or any agreement for division between them of a through rate. Neither has filed with the Commission any tariff or schedule of charges for a through rate, partly by rail and partly by water. In all cases the destination under the rail billing is Baltimore. The consignee is either the shipper at Baltimore or the Munson Line, as agents for the shipper, or the shipper in care of the Munson Line. The Munson Line looks to the shipper for instructions as to the further carriage of the merchandise, and in every case the Munson Line receives a separate written order from the shipper as to the further carriage. The Munson Line then makes out and sends to the shipper its own bill of lading for the (132e) ocean carriage, in which its freight rate is specified. If the railroad freight rate has not been paid by the shipper it is advanced and paid—that is, if it is not a prepaid shipment—it is advanced and paid for his account by the Munson Line to the rail carrier on presentation of bill, irrespective of its collection by the Munson Line from the consignee at the point of destination at the end of the water carriage. In so far as the rail carrier is concerned, since it does not issue a through bill of lading, its contract of carriage terminates when the goods are

delivered in Baltimore. Upon their arrival there the railroad sends an arrival notice to the Munson Line, as in the case of any other shipment consigned to Baltimore, and after the free time allowed by the tariff regulations, the railroad ceases to be liable as a carrier, and thereafter becomes liable merely as a bailee. If the billing in an order bill of lading, as distinguished from a straight bill of lading, it must be surrendered to the rail carrier before delivery of the goods is made.

In support of its claim that the respondent is a party to an arrangement common to it and the rail carrier and that, therefore, the claim of the separate billing is a mere subterfuge to escape the jurisdiction of the Commission, the Government stresses the fact that there is noted in the descriptive portion of the billing, and on the annexed or accompanying papers, the ultimate destination of the shipment, but the Court finds that there is no evidence tending to show that this does more than serve as a convenience in the subsequent movement of the freight. That is to say, there is no evidence of any greater joint arrangement between the rail and water carriers than has just been described.

In accepting shipment from the rail carrier and in advancing the freight charges at Baltimore, the steamship company acts as agent for the shipper. The relationship between the steamship company and the railroad is not different from that between rail carriers and consignors or consignees generally. There is nothing for- (132f) bidden in this method of handling freight charges. The rail carrier's contract ends with the delivery on the pier, unless there be some terminal or lighterage service. The transfer of the goods from this pier to the vessel is performed by stevedores acting for the water carrier, and the charges for the same are absorbed by the water carrier. It will be admitted, of course, that this entire method of handling shipments tends toward more prompt and efficient transportation and delivery, and is of mutual advantage both to the shipper and to the carrier, but the Court finds that this in itself is not sufficient to offset the legal independence which the Court finds exists between the contract of carriage of the one carrier and that of the other.

The Government also stresses the fact that under the

plan adopted of settling the rail-carrier's freight bill, the respondent, and therefore the shipper, is accorded a greater credit period than the ordinary consignee at Baltimore obtains under existing carrier's rules. But this also the Court finds is merely incidental to *an* arrangement, and is not indicative of a *common* arrangement, such as the Act contemplates. Whether more credit is actually now being extended by the railroad to the Munson Line than the law allows, is a question which may require investigation, in a proper proceeding, but it does not prove, the Court thinks, or tend to prove, in the absence of more evidence on the point, such common arrangment between the two carriers, covering the situation here complained of, as that term must be understood to be used in the law.

It may be desirable to stop the existing practice here complained of, but this is a request that should be addressed to Congress, not to this Court. What Congress may have intended to do, or should have done, is not the question, but rather—what has it, in fact, done? The Court finds that it has not embraced in existing legislation the method now in controversy.

Gentlemen of the jury, for these reasons I direct you to find a verdict for the respondent.

(Verdict of the jury as directed by the Court.)

T. D. 6

Uniform Domestic Straight Bill of Lading Adopted by Carriers in Official, Southern and Western Classification Territories, March 15, 1922

2 **THIS SHIPPING ORDER** must be legibly filled in, in Ink, in Indelible Pencil, or in Carbon; and retained by the Agent.

Shipper's No.

Agent's No.

WESTERN MARYLAND RAILWAY COMPANY

RECEIVE, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order,

At York, Pa. Dec. 10, 1927 192

From Chas. C. Fischer

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to Chas. C. Fischer % Munson Steam Ship Line

Destination Balto. State of Md. County of

Route W.M.RR.

(Delivering Carrier) Car Initial W.M. Car No. 25830

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*WEIGHT (Subject to Correction)	Class or Rate	Check Column
446	Bags Tankage & Fertilizer Mixture - 33850#			
	(Fertz Compound)			
		33850	13.	
	(For Chas. C. Fischer		44 40	
	MIAMI FLORIDA)			

If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (*See Section 7 of conditions.*)

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

(Agent or Cashier)

Per (The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

WESTERN MD. RY. CO. YORK, PA. RECEIVED DEC 27 1927

At York, Pa. Dec. 10, 1927 192

From Chas. C. Fischer

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to Chas. C. Fischer % Munson Steam Ship Line

Destination Balto. State of Md. County of

Route W.M.RR.

(Delivering Carrier) Car Initial W.M. Car No. 25830

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*WEIGHT (Subject to Correction)	Class or Rate	Check Column
446	Bags Tankage & Fertilizer Mixture = 33850#			
	(Fertz Compound)	7000	13	
			1	
			1.14 40	
	(For Chas. C. Fischer MIAMI FLORIDA)			
			Paid	

If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (See Section 7 of conditions.)

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

(Agent or Cashier)

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding per

Chas. C. Fischer Shipper.

Per C. A. Fischer

Permanent post-office address of shipper

WESTERN MD. RY. CO. YORK, PA. RECEIVED DEC 10 1927 PER AGENT

Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

(1)

I hereby certify this to be the original shipping order covering car WM 25830, taken from the files of this company.

P. L. Ringan

Auditor of Traffic, Western Md. Ry.Co.

March 15, 1929.

839 WESTERN MARYLAND RAILWAY CO. 839

FREIGHT WAYBILL

STOP THIS CAR AT | FOR | WEIGHT IN TONS: GROSS | NET

CAR INITIALS AND NUMBER | C. L. TRANSFERRED TO OR L. C. L. LOADING NO.

DATE | WAYBILL NO.

TO | STATION | STATE

FROM | STATION | STATE

NO. (16)

ROUTE Show each Junction and Carrier in Route Order to Destination of Waybill. Indicate by Check Mark whether Shipper's or Agent's Routing)

SHIPPER'S ROUTING

AGENT'S ROUTING

FULL NAME OF SHIPPER (Origin and Date, Original Car, Transfer Freight Bill and Previous Waybill Reference and Routing When Rebilled.)

CONSIGNEE, ADDRESS (Final Destination and Additional Routing.)

LENGTH OF CAR		MARKED CAPACITY OF CAR		STENCILED WEIGHT OF CA
ORDERED	FURNISHED	ORDERED	FURNISHED	

INSTRUCTIONS Regarding Icing, Ventilation, Heating, Milling, Weighing, Etc. If Iced, Specify to Whom Icing Should be Charged.)

WEIGHED

AT

GROSS 29260

TARE

ALLOWANCE 320

NET

(1ST) TRANSFER OR AUTHORITY FOR DIVERSION | (2ND) TRANSFER OR AUTHORITY FOR DIVERSION | (3RD) TRANSFER OR AUTHORITY FOR DIVERSION | (4TH) TRANSFER OR AUTHORITY FOR DIVERSION

1327
17
DEC

C.K.

THIS WAYBILL IS NOT TO BE USED FOR ALL SHIPMENTS, WHETHER UNLOAD OR LCL CARLOAD OR TRUCKLOAD LOCAL OR INTERLINE

Indicate by Symbol in Column Provided ★ how weights were obtained for L. C. L. Shipments only. R—Railroad Warehouse Scale. S—Shipper's Agreement or Tested Weights. E—Estimated—Weigh and Correct.

DESCRIPTION OF ARTICLES AND MARKS	COMMODITY NO.	★	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
and							

REVISED

DESTINATION AGENT'S FREIGHT BILL NO.

4[illegible]2

ALL YARD STAMPS TO BE PLACED ON BACK OF THIS WAYBILL IN SPACES PROVIDED

JUNCTION FORWARDING AGENTS WILL SHOW JUNCTION STAMPS IN THE SPACE AND ORDER PROVIDED BELOW:

FIRST JUNCTION	SECOND JUNCTION	THIRD JUNCTION	FOURTH JUNCTION	DESTINATION AGENT WILL STAMP HEREIN STATION NAME AND DATE REPORTED

NO. (16)

ROUTE Show each Junction and Carrier in Route Order to Destination of Waybill. Indicate by Check Mark whether Shipper's or Agent's Routing.

SHIPPER'S ROUTING

AGENT'S ROUTING

FULL NAME OF SHIPPER (Origin and Date, Original Car, Transfer Freight Bill and Previous Waybill Reference and Routing When Rebilled.)

CONSIGNEE. ADDRESS (Final Destination and Additional Routing.)

LENGTH OF CAR ORDERED	LENGTH OF CAR FURNISHED	MARKED CAPACITY OF CAR ORDERED	MARKED CAPACITY OF CAR FURNISHED	STENCILED WEIGHT OF CA

INSTRUCTIONS Regarding Icing, Ventilation, Heating, Milling, Weighing, Etc. If Iced, Specify to Whom Icing Should be Charged.)

WEIGHED

AT

GROSS 29250

TARE

ALLOWANCE 236 0

NET

(1ST) TRANSFER OR AUTHORITY FOR DIVERSION

(2ND) TRANSFER OR AUTHORITY FOR DIVERSION

(3RD) TRANSFER OR AUTHORITY FOR DIVERSION

(4TH) TRANSFER OR AUTHORITY FOR DIVERSION

1927
17
DEC
C.E.

THIS WAYBILL SHALL BE USED FOR ALL SHIPMENTS, WHETHER CARLOAD OR LESS CARLOAD OR

Indicate by Symbol in Column Provided ★ how weights were obtained for L. C. L. Shipments only. R—Railroad Warehouse Scale. S—Shipper's Agreement or Tested Weights. E—Estimated—Weigh and Correct.

DESCRIPTION OF ARTICLES AND MARKS	COMMODITY NO.	★	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
and							

REVISED
1926

DESTINATION AGENT'S FREIGHT BILL NO.

4[illegible]2.

ALL YARD STAMPS TO BE PLACED ON BACK OF THIS WAYBILL IN SPACES PROVIDED

JUNCTION FORWARDING AGENTS WILL SHOW JUNCTION STAMPS IN THE SPACE AND ORDER PROVIDED BELOW

FIRST JUNCTION	SECOND JUNCTION	THIRD JUNCTION	FOURTH JUNCTION	DESTINATION AGENT WILL STAMP HEREIN STATION NAME AND DATE REPORTED

ADDITIONAL JUNCTION AGENT'S STAMPS MUST BE SHOWN ON BACK OF WAYBILL IN SPACES PROVIDED.

839 WESTERN MARYLAND RAILWAY CO. 839

I hereby certify this to be the original York, Pa. waybill No. L 163 Dec. 10, 1927 covering car WM 25830 taken from the files of this company.

Auditor of Traffic, Western Md. Ry.Co.

March 15, 1929.

Arrived 12/14/27 Delivered 192 Contract

BALTIMORE (Port Covington), MD. Bill No. 4832

Mr. CHAS C FISCHER MIAMI FLORIDA C/O MORGAN SS LINE

Received from WESTERN MARYLAND RAILWAY COMPANY in good condition, articles specified below:

Per YORK PA Route WM Way-Bill No. 163 Date 12/10

WM Car No. 25850 Original Car

Name of Shipper CHAS C FISCHER

No. of Packages	ARTICLES AND MARKS	Bill of Lading References	Weight	Rate	Freight	Advances	Prepaid	Collect
446	BAGS TANKAGE & FERT MIXT		74760 41100 33660	13	43 76			43 76
	Old Bags							

Ocean Rate Prepay Ocean Freight $ and Collect of Freight Agent Port Covington, Md.

Delivered 12-14 To Scow No. 96 Signature

I hereby certify this to be the original scow receipt portion of freight bill Port Covington, Md. No 4832 Dec 12 1927 taken from the files of The Cottman Co.

Auditor of Traffic, Western Md. Ry.Co.

March 15, 1929.

(1)

Station | Arrived | Notified | Unloaded | Contact

BALTIMORE (Port Covington), MD., 12/12/27 192 Bill No. 4832

Mr. CHAS C FISCHER MIAMI FLORIDA C/O MUNSON SS LINE

Received from WESTERN MARYLAND RAILWAY COMPANY in good condition, articles specified below

Per YORK PA Route Way-Bill No. 163 Date 12/10

Car No. 25830 Original Car

Name of Shipper CHAS C FISCHER

No. of Packages	ARTICLES AND MARKS	Bill of Lading References	Weight	Rate	Freight	Advances	Prepaid	Collect
448	BAGS TANKAGE & FERT MIXT		74760					
			41100					
	OSIE 85		33660	13	43 76			43 76
	12/15/27							

Ocean Rate Prepay Ocean Freight $

Delivered 12-14-27 To Scow No. 8

and Collect of Freight Agent
Port Covington, Md.

Signature

I hereby certify this to be the original delivery receipt portion of freight bill - Port Covington Md No 4832 Dec. 12th 1927, taken from the files of this company.

Auditor of Traffic, Western Md. Ry.Co.

March 15. 1929.

To be retained for station record when dated and signed by consignee.

BALTIMORE TO MIAMI

MUNSON STEAMSHIP LINE

901 KEYSER BLDG.
Baltimore, Md.

141 NORTHEAST THIRD AVENUE
Miami, Fla.

S. S. Manlisto Voy. No. 22 No. M-3

Shipped by Chas. C. Fisher Account of

Consigned to Chas. C. Fisher

Street Address Miami, Fla.

FREIGHT RATE DOES NOT INCLUDE MARINE INSURANCE

NOT INSURED unless endorsed in this space.

NO. OF PKGS.	DESCRIPTION	WEIGHT	RATE	CHECK	FREIGHT AND CHARGES
446	Bags Sausage Sort. Mix't.				Collect.
	Inv. No. 2536	33850.35			84.63
		Inland Frt.			43.76
					$128.39
6	bags. 2 bags are in dispute, if on board to be delivered.				

STRAIGHT BILL OF LADING
NOT NEGOTIABLE

It is agreed that the Munson Steamship Line and or the Steamer accept (s) no responsibility for any consequences of delayed discharge, due to congested facilities at port of discharge including deterioration of cargo, loss of market or other consequential damages.

RISK ON WHARF

23. That merchandise on bulkhead wharf or in warehouse awaiting shipment, transshipment or delivery be at owner's risk of loss or damage by fire, flood, or other casualty, and of the giving away or failing or destruction in whole or part of the warehouse or the wharf of any structure thereon, not happening through the fault or negligence of carriers.

RIOT, BLOCKADES, QUARANTINES, STRIKES, ETC.

24. When the loading, transport, transshipment or delivery is prevented in consequence of ice, weather, epidemic quarantine, sanitary measures, blockade, war, sedition, strikes, troubles, labor agitation, and all analogous circumstances whatever the carriers shall be entitled to load, discharge, transship, put into warehouse or quarantine depot, or into a lighter, hulk or craft, and to deliver all or any part of the goods, whether the terminus of the voyage or not, and all risks whatsoever, and all expenses of transshipment, forwarding or warehousing or Customs, and all extra expenses of whatsoever kind incurred in consequence of the above circumstances will be entirely for account of the shipper, consignee or party claiming the goods, even though some part of such extra expenses may be occasioned by the fault of the carriers, the Master and owner being discharged from all responsibility on the goods being placed in charge of the Custom House or any Mercantile Agent or Consul, or quarantine, all and any of them, and such discharge shall be deemed a full and final delivery of the goods, or is detained at quarantine, the goods may be forthwith without previous notice to shipper, owner or consignee, discharged into depots, lazarettes, hulks, crafts or lighters, at the risk and expense of shipper, therefor, as carriers, bailee or otherwise, ending as soon as the goods are delivered from the ship's tackle, and all expenses thereby or thereafter incurred, and all, incurred cost of such delivery shall be paid by shipper, owner and consignee, all and any of them, and there land or goods not be admitted, or such discharge be impracticable, or so in the master's opinion, the carrier retaining a lien on the goods therefor; but should the vessel port, or at ship's option to the nearest safe port to which the ship is bound, at the risk and expense of shipper, owner and consignee, all and any of them, and there land the goods as if at the original port of discharge, at the risk and expense of shipper, owner and consignee, all and any of them, and there land original port of discharge, and the carrier retaining a lien on the goods therefor; but should the vessel proceed to the nearest safe and all risks and expenses incurred thereafter shall be on account of shipper, owner and consignee, all and any of them, and there land

26. In case of the blockade or interdict of the port of delivery or transshipment, or if, without such blockade or interdict, the entering of the port should be considered by the Master unsafe by reason of disease, war or disturbances, he is to have the option of landing the goods at any other port which he may consider safe, at shipper's or consignee's risk and expense; and on the goods being placed in charge of the Custom House or any mercantile agent or consul, and a letter being put into the post addressed to the shipper or consignee if named, stating the landing and with whom deposited, the goods to be at shipper's or consignee's risk and expense, and the Master and owner discharged from all responsibility.

37. The goods shall be liable for all expense of handling, compressing, reconditioning and gathering of loose cargo and contents of packages, and for any payment, expense, duty, tax or impost of whatsoever nature levied upon the shipowner or the steamer by the authorities at any port of transshipment or discharge for or in consequence of illegal, incorrect or insufficient marking, numbering or addressing of packages, or description of their contents, or failure of the owner, shipper or consignee of the cargo to procure consular, Board of Health or other certificates to accompany the goods, or to comply with regulations of any kind whatsoever imposed with respect to the goods by the authorities at the ports of shipment and delivery. Cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for shall be allocated to the various consignees of goods of like character in proportion to any apparent shortage, loss of weight or damage and shall be accepted as good and complete delivery.

28. Green fruits, vegetables, meats and any other kind of perishable goods will be carried in ordinary cargo compartments or holds, unless it has been expressly agreed for a special rate of freight, that such goods will be carried in a refrigerated, chilled or specially ventilated compartment. Where such goods of a perishable nature are carried in ordinary compartments and a special rate of freight is not paid, the shipper represents that such goods do not need, and the shipowner will not be required to give them any other treatment than that given to ordinary non-perishable cargo. The refrigerating, chilling or ventilating machinery shall be considered part of the machinery and appurtenances of the vessel, and all exceptions mentioned elsewhere in this bill of lading shall be applicable thereto and to the cargo carried in the refrigerated compartments.

Shipped by Chas. E. Dasher Account of

Consigned to Chas. E. Dasher Miami, Fla.

Street Address

FREIGHT RATE DOES NOT INCLUDE MARINE INSURANCE

NOT INSURED unless endorsed in this space.

NO. OF PKGS.	DESCRIPTION	WEIGHT	RATE	CHECK	FREIGHT AND CHARGES
446	Bags Sundries Sort. Mixt.				Collect.
		33850.25			84.63
	Inland Frt.				43.76
					$128.39

Cov. B.M. 25830.

STRAIGHT BILL OF LADING NOT NEGOTIABLE

Ord bags. 2 bags over in dispute, if on board to be delivered

It is agreed that the Munson Steamship Line and or the Steamer accept (s) no responsibility for any consequences of delayed discharge, due to congested facilities at port of discharge including deterioration of cargo, loss of market or other consequential damages.

RISK ON WHARF

35. That merchandise on bulkhead wharf or in warehouse awaiting shipment, transshipment or delivery be at owner's risk of loss or damage by fire, flood, or other casualty, and or the giving away or failing or destruction in whole or part of the warehouse or the wharf of any structure thereon, not happening through the fault or negligence of carriers.

ICE, BLOCKADES, QUARANTINES, STRIKES, ETC.

34. When the loading, transport, transshipment or delivery is prevented in consequence of ice, weather, epidemic quarantine, sanitary measures, blockade, war, sedition, strikes, troubles, labor agitation, and all analogous circumstances whatever the carriers shall be entitled to load, discharge, transship, put into warehouse or quarantine depot, or into a lighter, hulk or craft, and to deliver all or any part of the goods, whether the terminus of the voyage or not, and all risks whatsoever, and all expenses of transshipment, forwarding or warehousing or Customs, and all extra expenses of whatsoever kind incurred in consequence of the above circumstances will be entirely for account of the shipper, consignee or party claiming the goods, even though some part of such extra expenses may be occasioned by the fault of the carriers; the Master and Owner being discharged from all responsibility on the goods being placed in charge of the Custom House or any Mercantile Agent or Consul.

35. Also, that if the ship is prevented by Quarantine from reaching her destination, or making due delivery of the goods, or is detained at quarantine, the goods may be forthwith without previous notice to shipper, owner or consignee, discharged into depots, lazarettes, hulks, crafts or lighters, at the risk and expense of shipper, owner and consignees, all and any of them, and such discharge shall be deemed a full and final delivery of the goods, all risk, responsibility and expenses of the carrier therefor, as carriers, bailee or otherwise, ending as soon as the goods are delivered from the ship's tackle, and all expenses thereby or thereafter incurred, and all increased cost of such delivery shall be paid by shipper, owner and consignee, all and any of them, the carrier retaining a lien on the goods therefor; but should the vessel or goods not be admitted, or such discharge be impracticable, or so in the master's opinion, the carrier may forthwith without previous notice, proceed to the nearest safe port, or at ship's option to the nearest safeport to which the ship is bound, at the risk and expense of shipper, owner and consignee, all and any of them, and there land the goods as if at the original port of discharge, at the risk and expense of shipper, owner and consignee, all and any of them, and there land original port of discharge, and the carrier retaining a lien on the goods therefor and for all costs, charges and expenses incurred, and for all increased cost of delivery; and all risks and expenses incurred thereafter shall be on account of shipper, owner or consignee.

36. In case of the blockade or interdict of the port of delivery or transshipment, or if, without such blockade or interdict, the entering of the port should be considered by the Master unsafe by reason of disease, war or disturbances, he is to have the option of landing the goods at any other port which he may consider safe, at shipper's or consignee's risk and expense; and on the goods being placed in charge of the Custom House or any mercantile agent or consul, and a letter being put into the post addressed to the shipper or consignee if named, stating the landing and with whom deposited, the goods to be at shipper's or consignee's risk and expense, and the master and owner discharged from all responsibility.

37. The goods shall be liable for all expense of mending, cooperage, reconditioning and gathering of loose cargo and contents of packages; and for any payment, expense, duty, tax or impost of whatsoever nature levied upon the shipowner or the steamer by the authorities at any port of transshipment or discharge for or in connection with the goods herein described; and also for any payment, fine, expense, loss, damage or detention, howsoever sustained or incurred by the shipowner or steamer in consequence of illegal, incorrect or insufficient marking, numbering or addressing of packages, or description of their contents, or failure of the owner, shipper or consignee of the cargo to procure consular, Board of Health or other certificates to accompany the goods, or to comply with regulations of any kind whatsoever imposed with respect to the goods by the authorities at the ports of shipment or delivery. Cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for shall be allocated to the various consignees of goods of like character in proportion to any apparent shortage, loss of weight or damage and shall be accepted as good and complete delivery.

38. Green fruits, vegetables, meats and any other kind of perishable goods will be carried in ordinary cargo compartments or holds, unless it has been expressly agreed, for a special rate of freight, that such goods will be carried in a refrigerated, chilled or specially ventilated compartment. Where such goods of a perishable nature are carried in ordinary compartments and a special rate of freight is not paid, the shipper represents that such goods do not need, and the shipowner will not be required to give them, any other treatment than that given to ordinary non-perishable cargo. The refrigerating, chilling or ventilating machinery shall be considered part of the machinery and appurtenances of the vessel, and all exceptions mentioned elsewhere in this bill of lading shall be applicable thereto and to the cargo carried in the refrigerated compartments.

Baltimore (Date) January 15th. 1927

H. P. Cora

FOR MUNSON STEAMSHIP LINE, Agents

THIS BILL OF LADING MUST BE SURRENDERED BEFORE DELIVERY

Received $.

to apply in prepayment of the charge on the property described hereon.

(1)

Agent or Cashi

Government Lighter

Dec. 21, 7

Mr. C. F. Eckhardt, Agent,
Western Md. Rwy.,
Port Covington,
Baltimore, Md.

Dear Sir:-

S.S. MUNLISTO V-22 S.B.

We are enclosing herewith our check # 13852 in amount $136.89 in payment of the following bills, which we kindly ask that you receipt and return by early mail:

Freight Bill No.	Shipper	B/L	Amount.
4306	U. S. Glass Co.	H 1-8	13.75
4630	Knouse & Fohl Canning Co.	J 4	79.38 -
4832	Chas. C. Fischer	M 3	43.76 -

Yours very truly,

MUNSON STEAMSHIP LINE

E. L. Cunningham

Asst. Local Manager.

MUNICIPAL GARBAGE DISPOSAL

MANUFACTURER OF

GREASE, TANKAGE AND GROUND BONE

YORK, PENNA.

Munson Line,

Balto., Md.

Gentlemen;

Enclosed you will find freight bill covering shipment of 446 bags manure mixture via ... to be delivered to Chas.C.Fischer, Miami, Florida.

Will you kindly mail your freight bill to Chas.C.Fischer, P.O.Box 412, South Miami, Florida and send a copy to our York, Pa. office?

Very truly yours,

Chas. C. Fischer

Per Arthur H. Fischer

M-5

P. A. MEMORANDUM S. S. Sailing Dec. 8

Section Arrived Notified Unloaded Contract

BALTIMORE (Port Covington), MD. 1/12/27 192 Bill No. 4832

Mr. Chas. C. Fischer, Miami Florida c/o Munson SS Line

Received from Western Maryland Railway Company in good condition, articles specified below:

Per YORK PA Route WM Way Bill No. 163 Date 23/10

WM Car No. 25830 Original Car

Name of Shipper CHAS. C. FISCHER

No. of Packages	ARTICLES AND MARKS	Bill of Lading References	Weight	Rate	Freight	Advances	Prepaid	Collect
446	BAGS TANKAGE & FERT. MIXT.		74760 41100 33660	13	43 76			43 76

COPY

Old bags, 2 bags over in dispute if on board to be delivered.

(ARRIVAL NOTICE)

To be retained for station record when dated and signed by consignee

Ocean Rate Prepay Ocean Freight, $ and Collect of Freight Agent, Port Covington, Md.

Delivered to Scow No. Signature

NOTICE TO S. S. AGENT S. S. Sailing

ation Arrived Notified Unloaded Contract

TIMORE (Port Covington), MD., 12/12/27 192 Bill No. 4852

CHAS C FISCHER MIAMI FLORIDA C/O MURRAY SS LINE

Received from **WESTERN MARYLAND RAILWAY COMPANY** in good condition, articles specified below:

Per YORK PA Route Way-Bill No. 103 Date 12/10

BM Car No. 25830 Original Car

Name of Shipper CHAS C FISCHER

No. of Packages	ARTICLES AND MARKS	Bill of Lading References	Weight	Rate	Freight	Advances	Prepaid	Collect
446	BAGS TANKAGE & FERT MIXT		74760 41100 33660	13	43 76			43 76

Ocean Rate Prepay Ocean Freight $ and Collect of Freight Agent Port Covington, Md.

Delivered To Scow No. Signature

Original and bona fide shipper's weight. Subject to correction. Shippers and consignees are prohibited by law from using any rebate, concession or discrimination in connection with the transportation of property, and are subject to the penalties prescribed for violation thereof. Subject to the classifications and tariffs in effect on the date of issue of this Bill of Lading. Property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company (the word Company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

The Pennsylvania Railroad Company

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Bill of Lading,

at Jacksonville, Illinois 19

from Chicago, Ill.

noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under this contract) agrees to carry to its usual place of delivery at said destination, if on its road or its own or controlled line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from

to

1st Times 1st	1½ 1st Class	2 2d Class	2½ Sub 2d	3 3d Class	3½ Sub 3d	4 4th Class	4½ Sub 4th	5 5th Class	6 6th Class	7 7th Class	8 8th Class	9 9th Class	10 10th Class

Consigned to Thompson Dredging Co. Chicago Ill.

Destination Curtis Bay, Md. State of

Route Car Initial K.C. No. 17

No. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
17	For Sec. welded			
	Pipe 20" x 30"			
	No. 2. Gauge.			
	For - Clark Dredging Co			
	Miami, Fla			
	Order No. 7678			
36'	Car ordered.			

Loaded from Docks

F. E. Williamson

Shipper. Agent.

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Bill of Lading

at Lancaster, Ohio, 19

from Lancaster, Ohio, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which the carrier agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained including conditions on back hereof, and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from

to

Is in Cents per 100 lbs.

If Times 1st	If 1st Class	If 2d Class	If Rule 25	If 3d Class	If Rule 26	If Rule 28	If 4th Class	If 5th Class	If 6th Class	If Class A	If Class B	If Class C	If Class D	If

Consigned to Wisconsin R.R. Lines - C/o C.C. Co. Docks

Destination Curtis Bay, Balto. State of Md. County of

Route Car Initial K.R. Car No. 11

No. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	RATE	CHARGES
17	Cast. Iron riveted Pipe 20" x 30' No. 2 Gauge.			
	For - Clark Dredging Co. Miami, Fla.			
	Order No. 7678			
36	Car ordered.			

Lancaster Iron Works Shipper. F. C. Williamson Agent

Per H. H. B. Per K.

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

PUSHED

STOP THIS CAR AT: D V SCALES | FOR | WEIGHT IN TONS: GROSS 43 | NET

CAR INITIALS AND NUMBER: P R R 300219 | C. L. TRANSFERRED OR L. C. L. LOADING No.

TO STATION: BALTO CANTON MD | STATE: MD

DATE: 8/18/27 B | WAYBILL No.: 65695

FROM STATION: LANCASTER PENNA | STATE: PA

Route (SHOW EACH JUNCTION AND CARRIER IN ROUTE ORDER TO DESTINATION OF WAYBILL. INDICATE BY CHECK MARK WHETHER SHIPPER'S OR AGENT'S ROUTING): COLA | SHIPPER'S ROUTING | AGENT'S ROUTING

NUMBER: 989 LANCASTER PENNA

FULL NAME OF SHIPPER (ORIGIN AND DATE, ORIGINAL CAR, TRANSFER FREIGHT BILL AND PREVIOUS WAYBILL REFERENCE AND ROUTING WHEN REBILLED): LANCASTER IRON WORKS

CONSIGNEE, ADDRESS (FINAL DESTINATION AND ADDITIONAL ROUTING): MUNSON S S LINE KEYSER BLDG BALTO MD
CURTIS BAY BALTO MD.

LENGTH OF CAR FURNISHED	MARKED CAPACITY OF CAR ORDERED	MARKED CAPACITY OF CAR FURNISHED	STENCILED WGT. OF CAR
36		100000	

INSTRUCTIONS (REGARDING ICING, VENTILATION, HEATING, MILLING, WEIGHING, ETC. IF ICED, SPECIFY TO WHOM ICING SHOULD BE CHARGED): FOR CLARK DREDGING CO
MIAMI FLA

WEIGHED AT

GROSS	91200
TARE	44200
ALLOWANCE	
NET	47000

AUG 28 1927

(1st) TRANSFER OR AUTHORITY FOR DIVERSION | (2nd) TRANSFER OR AUTHORITY FOR DIVERSION | (3rd) TRANSFER OR AUTHORITY FOR DIVERSION | (4th) TRANSFER OR AUTHORITY FOR DIVERSION

INDICATE BY SYMBOL IN COLUMN PROVIDED ★ HOW WEIGHTS WERE OBTAINED FOR L. C. L. SHIPMENTS ONLY: S SHIPPER'S AGREEMENT OR TESTED WEIGHTS E ESTIMATED WEIGH AND CONTENT

DESCRIPTION OF ARTICLES AND MARKS	COMMODITY No.	★	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
17 PCS STEEL RIVETED PIPE # 2 GAUGE 20 X 30 LOADED BY SHIPPER	69 L		~~E 47000~~ R 47000	14½	~~3420~~ 6815		

ALL YARD STAMPS TO BE PLACED ON BACK OF THIS WAYBILL IN SPACES PROVIDED

JUNCTION FORWARDING AGENTS WILL SHOW JUNCTION STAMPS IN THE SPACE AND ORDER PROVIDED BELOW

FIRST JUNCTION	SECOND JUNCTION	THIRD JUNCTION	FOURTH JUNCTION	LAST JUNCTION WILL STAMP HERE IN STATION AND NAME AND DATE REPORTED
				38240

ADDITIONAL JUNCTION AGENT'S STAMPS MUST BE SHOWN ON BACK OF WAYBILL

GOVERNMENT EXHIBIT LANCASTER IRON WORKS NO. 3.

(144) MEMO. OF CLERK.

This exhibit is a carbon copy of Government Exhibit Lancaster Iron Works No. 2, and is omitted to avoid duplication.

MUNSON STEAMSHIP LINE

90f KEYSER BLDG.
Baltimore, Md.

141 NORTHEAST THIRD AVENUE
Miami, Fla.

S. S. Manuela Voy. No. 18 No. MM-5

Shipped by Eweasley Iron Works Account of

Consigned to Clark Bridging Co Miami, Fla.

Street Address Miami, Fla

FREIGHT RATE DOES NOT INCLUDE MARINE INSURANCE

NOT INSURED unless endorsed in this space.

NO. PKGS	DESCRIPTION	WEIGHT	RATE	CHECK	FREIGHT AND CHARGES
	47 Jacks Steel Erected Pile Trestle 31				Collect 145.70
	U.S.A. - Havana		Insurance		68.15
				Total	213.85

STRAIGHT BILL OF LADING
NOT NEGOTIABLE

It is agreed that the Munson Steamship Line and or the Steamer accept (s) no responsibility for any consequences of delayed discharge, due to congested facilities at port of discharge including deterioration of cargo, loss of market or other consequential damages.

RISK ON WHARF

That merchandise on bulkhead wharf or in warehouse awaiting shipment, transshipment or delivery be at owner's risk of loss or damage by fire, flood, or other casualty, and of the giving away or falling or destruction on whole or part of the warehouse or the wharf of any structure thereof, but happening through the fault or negligence of carriers.

ICE, BLOCKADES, QUARANTINES, STRIKES, ETC.

34. When the loading, transport, transhipment or delivery is prevented in consequence of ice, weather, epidemic, quarantine, sanitary measures, blockade, war, pending strikes, troubles, labor agitation, and all analogous circumstances whatever the carriers shall be entitled to land, discharge, transship, put into warehouse or quarantine depot, or into a lighter, hulk or craft, and to deliver all or any part of the goods, whether the terminus of the voyage or not, and all risky whatsoever, and all expenses of transhipment, forwarding or warehousing or Customs and all extra expenses of whatsoever kind incurred in consequence of the above circumstances will be entirely for account of the shipper, consignee or party claiming the goods, even though some part of such extra expenses may be incurred by the fault of the carriers; the Master and Owner being discharged from all responsibility on the goods being placed in charge of the Custom House or any Mercantile Agent or Consul.

35. Also, that if the ship is prevented by Quarantine from reaching her destination, or making due delivery of the goods, or is detained at quarantine, the goods may be forthwith without previous notice to shipper, owner or consignee, discharged into depots, lazaretto, hulks, craft or lighters, at the risk and expense of shipper, owner and consignee, all and any of them, and such discharge shall be deemed a full and final delivery of the goods, all risk, responsibility and expenses of the carrier thereafter, as carriers, bailee or otherwise, ending as soon as the goods are delivered from the ship's tackle, and all expenses thereby or thereafter incurred, and all increased cost of such delivery shall be paid by shipper, owner and consignee, all and any of them, the carrier retaining a lien on the goods therefor, but should the vessel or goods not be admitted, or such discharge be impracticable, or so in the master's opinion, the carrier may forthwith without previous notice proceed to the nearest safe port, at ship's option to the nearest safe port to which the ship is bound, at the risk and expense of shipper, owner and consignee, all and any of them and there land the goods as if at the original port of discharge, at the risk and expense of shipper, owner and consignee, all and any of them, and there land original port of discharge, and the carrier retaining a lien on the goods therefor and for all costs, charges and expenses incurred, and for all increased cost of delivery, and all risks and expenses incurred thereafter shall be on account of shipper, owner or consignee.

36. In case of the blockade or interdict of the port of delivery or transhipment, or if, without such blockade or interdict, the entering of the port should be considered by the Master unsafe by reason of disease, war or disturbances, he is to have the option of landing the goods at any other port which he may consider safe, at shipper's or consignee's risk and expense; and on the goods being placed in charge of the Custom House or any mercantile agent or consul, and a letter being put into the post addressed to the shipper or consignee if named, stating the landing and with whom deposited, the goods to be at shipper's or consignee's risk and expense, and the master and owner discharged from all responsibility.

37. The goods shall be liable for all expense of mending, cooperage, reconditioning and gathering of loose cargo and contents of packages, and for any payment, expense, duty, tax or impost of whatsoever nature levied upon the shipowner or the steamer by the authorities at any port of transshipment or discharge for or in connection with the goods herein described; and also for any payment, fine, expense, loss, damage or detention, howsoever sustained or incurred by the shipowner or steamer in consequence of illegal, incorrect or insufficient marking, numbering or addressing of packages, or description of their contents, or failure of the owner, shipper or consignee of the cargo to procure consular, Board of Health or other certificates to accompany the goods, or to comply with regulations of any kind whatsoever imposed with respect to the goods by the authorities at the ports of shipment or delivery. Cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for shall be allocated to the various consignees of goods of like character in proportion to any apparent shortage, loss of weight or damage and shall be accepted as good and complete delivery.

38. Green fruits, vegetables, meats and any other kind of perishable goods will be carried in ordinary cargo compartments or holds, unless it has been expressly agreed, for a special rate of freight, that such goods will be carried in a refrigerated, chilled or specially ventilated compartment. Where such goods of a perishable nature are carried in ordinary compartments and a special rate of freight is not paid, the shipper represents that such goods do not need, and the shipowner will not be required to give them, any other treatment than that given to ordinary non-perishable cargo. The refrigerating, chilling or ventilating machinery shall be considered part of the machinery and appurtenances of the vessel, and all exceptions mentioned elsewhere in this bill of lading shall be applicable thereto and to the cargo carried in the refrigerated compartments.

Shipped by Lancaster Iron Works Account of

Consigned to Clark Dredging Co Miami, Fla.

Street Address Miami, Fla.

FREIGHT RATE DOES NOT INCLUDE MARINE INSURANCE

NOT INSURED unless endorsed in this space.

OF PKGS.	DESCRIPTION	WEIGHT	RATE	CHECK	FREIGHT AND CHARGES
17	Pcs Fish Riveted Pipe	approx 31			Collect
	F.K.R. - 300219.				145.70
			In and Drt.		68.15
					Total - $ 213.85

STRAIGHT BILL OF LADING
NOT NEGOTIABLE

COPY

It is agreed that the Munson Steamship Line and or the Steamer accept (s) no responsibility for any consequences of delayed discharge, due to congested facilities at port of discharge including deterioration of cargo, loss of market or other consequential damages.

RISK ON WHARF

25. That merchandise on bulkhead wharf or in warehouse awaiting shipment, transshipment or delivery be at owner's risk of loss or damage by fire, flood, or other casualty, and or the giving away or falling or destruction in whole or part of the warehouse or the wharf of any structure thereon, not happening through the fault or negligence of carriers.

ICE, BLOCKADES, QUARANTINES, STRIKES, ETC.

34. When the loading, transport, transshipment or delivery is prevented in consequence of ice, weather, epidemic quarantine, sanitary measures, blockade, war, sedition, strikes, troubles, labor agitation, and all analogous circumstances whatever the carriers shall be entitled to load, discharge, tranship, put into warehouse or quarantine depot, or into a lighter, hulk or craft, and to deliver all or any part of the goods, whether the terminus of the voyage or not, and all risks whatsoever, and all expenses of transshipment, forwarding or warehousing or Customs, and all extra expenses of whatsoever kind incurred in consequence of the above circumstances will be entirely for account of the shipper, consignee or party claiming the goods; even though some part of such extra expenses may be occasioned by the fault of the carriers; the Master and Owner being discharged from all responsibility on the goods being placed in charge of the Custom House or any Mercantile Agent or Consul.

35. Also, that if the ship is prevented by Quarantine from reaching her destination, or making due delivery of the goods, or is detained at quarantine, the goods may be forthwith without previous notice to shipper, owner or consignee, discharged into depots, lazarettes, hulks, crafts or lighters, at the risk and expense of shipper, owner and consignee, all and any of them, and such discharge shall be deemed a full and final delivery of the goods, all risk, responsibility and expenses of the carrier therefor, as carriers, bailee or otherwise, ending as soon as the goods are delivered from the ship's tackle, and all expenses thereby or thereafter incurred, and all insurance on the goods shall cease; and the proportion of the freight and primage and average, if any, and the whole of the current cost of such delivery shall be paid by shipper, owner and consignee, all and any of them, the carrier retaining a lien on the goods therefor; but should the vessel or her agent, at ship's option to the nearest safe port to which the ship is bound, at the risk and expense of shipper, owner and consignee, all and any of them, and there land the goods as if at the original port of discharge, at the risk and expense of shipper, owner and consignee, all and any of them, and there land original port of discharge, and the carrier retaining a lien on the goods therefor and for all costs, charges and expenses incurred, and for all increased cost of delivery; and all risks and expenses incurred thereafter shall be on account of shipper, owner or consignee.

36. In case of the blockade or interdict of the port of delivery or transshipment, or if, without such blockade or interdict, the entering of the port should be considered by the Master unsafe by reason of disease, war or disturbances, he is to have the option of landing the goods at any other port which he may consider safe, at shipper's or consignee's risk and expense; and on the goods being placed in charge of the Custom House or any mercantile agent or consul, and a letter being put into the post addressed to the shipper or consignee if named, stating the landing and with whom deposited, the goods to be at shipper's or consignee's risk and expense, and the master and owner discharged from all responsibility.

37. The goods shall be liable for all expense of mending, cooperage, reconditioning and gathering of loose cargo and contents of packages, and for any payment, expense, duty, tax or impost of whatsoever nature levied upon the shipowner or the steamer by the authorities at any port of transshipment or discharge for or in connection with the goods herein described; and also for any payment, fine, expense, loss, damage or detention, howsoever sustained or incurred by the shipowner or steamer in consequence of illegal, incorrect or insufficient marking, numbering or addressing of packages, or description of their contents, or failure of the owner, shipper or consignee of the cargo to procure consular, Board of Health or other certificates to accompany the goods, or to comply with regulations of any kind whatsoever imposed with respect to the goods by the authorities at the ports of shipmnt or delivery. Cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for shall be allocated to the various consignees of goods of like character in proportion to any apparent shortage, loss of weight or damage and shall be accepted as good and complete delivery.

38. Green fruits, vegetables, meats and any other kind of perishable goods will be carried in ordinary cargo compartments or holds, unless it has been expressly agreed, for a special rate of freight, that such goods will be carried in a refrigerated, chilled or specially ventilated compartment. Where such goods of a perishable nature are carried in ordinary compartments and a special rate of freight is not paid, the shipper represents that such goods do not need, and the shipowner will not be required to give them, any other treatment than that given to ordinary non-perishable cargo. The refrigerating, chilling or ventilating machinery shall be considered part of the machinery and appurtenances of the vessel, and all exceptions mentioned elsewhere in this bill of lading shall be applicable thereto and to the cargo carried in the refrigerated compartments.

Baltimore (Date) August 25, 1927

N. P. Costa.

FOR MUNSON STEAMSHIP LINE, Agents

THIS BILL OF LADING MUST BE SURRENDERED BEFORE DELIVERY

Received $ ____ to apply in prepayment of the charge on the property described hereon.

(3)

Agent or Cashier

Agreement Lancaster Iron Works

Aug. 31, 1927

Mr. . C. Frederick, Agent.,
Pennsylvania R.R.
Canton,
Baltimore, Md.

Dear Sir:

S.S. MUNLISTO V-18 S.B.

We are enclosing herewith our check #13227 in amount $199.45 in payment of the following bills, which we kindly ask that you receipt and return by early mail:

Freight Bill No	Shipper	B/L	Amount
58999	A.W. Fesser	M 15	63.00
58580	Lancaster Iron Works	M 5	68.15
58812	"	M 6	68.30

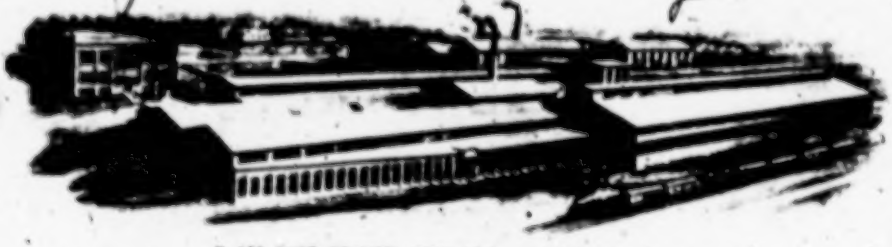
Yours very truly,

MUNSON STEAMSHIP LINE

C. L. Cunningham

Asst. Local Manager

Apartments Leased from works



TANKS

ACID STORAGE
BLOW OFF
COMPRESSED AIR
FILTER
GASOLINE STORAGE
HYDRO PNEUMATIC
JACKETED
MIXING
MOLASSES STORAGE
OIL STORAGE
PRESSURE
SETTLING
VACUUM
WATER SOFTENER
WATER STORAGE
STEEL PLATE CONSTRUCTION

PLATE SHOP FOUNDRY MACHINE SHOP PATTERN SHOP

TANKS

SPECIALTIES

OIL BURNERS
HEAT TREATING FURNACES
CLAY WORKING MACHINERY
CASTINGS IRON & SEMI STEEL
CONDENSERS
DIGESTORS
DREDGE PIPE VS GATE VALVES
EVAPORATING PANS
GAS AND HYDRAULIC MAINS
HOPPERS
RIVETED PIPE
ROTARY DRYERS
STACKS & BREECHING
LARGE STORAGE TANKS

Lancaster Iron Works Inc.

Lancaster, Pennsylvania

August 18, 1927.

Munson Steamship Line,
Keyser Bldg.,
Baltimore Md.,

Gentlemen:-

Enclosed herewith please find memorandum bill of lading covering shipment of 17 pieces steel riveted pipe 20" x 30' which went forward to the Clark Dredging Co. Miami, Fla., on Car P.R.R. #300219.

Please note that there will be one more care same number of pieces of pipe which will be forwarded from Lancaster, Saturday. This material is to be forwarded on steamer sailing August 25th.

Yours very truly,

LANCASTER IRON WORKS, INC.

H. H. Brenneman
Traffic Manager

HHB/AMH

WABASH RAILWAY COMPANY

Agent's No.

RECEIVE, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order.

at Detroit Mich. 11-29 1927

from Studebaker Corp. of Canada Ltd.

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

The surrender of the Original ORDER Bill of Lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by the bill of lading will not be permitted unless provided by law or unless permission is indorsed on the original bill of lading or given in writing by the shipper.

Consigned to ORDER OF The Studebaker Corp. of Canada Ltd. (Mail or street address of consignee—For purposes of notification only.)

Destination Baltimore State of Md. County of

Notify Thurston Steamship Co

At Baltimore State of Md.

Route B.O.

(Delivering carrier) Car Initial T&O. Car No. 74259

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
1	Coupe & Pass.	3415		
1	Royal 4 Pass. Coupe	3475		
1	Royal Victoria	3545		
	Crated	280		
		10715		
3	sets Bumpers detached and			
	nailed to floor			
3	Tops, Tools, nailed to Cartons			
	For Forwarding to Miami, Fla.			
	40 Foot Car.			
	LC.			

If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. *(See section 7 of conditions.)*

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

Shipper. Agent.

WABASH RAILWAY COMPANY

Agent's No.

RECEIVE, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order.

at Detroit Mich. 11-29 192 7

from Standard Oil Co. of Ohio

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property, over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

The surrender of the Original ORDER Bill of Lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by the bill of lading will not be permitted unless provided by law or unless permission is indorsed on the original bill of lading or given in writing by the shipper.

Consigned to ORDER OF The Standard Oil Co. of Ohio (Mail or street address of consignee—For purposes of notification only.)

Destination Baltimore State of Md. County of

Notify Merrison Steam Mfg Co

At Baltimore State of Md. County of

Route B O

(Delivering carrier) Car Initial T&O Car No. 74359

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
1	Oriya & Pass.	3415		
1	Regal 4 Pass. Coupe	3475		
1	Regal Victoria	3545		
	1 Tarped Dup	280		
		10715		
3	sets Burning Outfits Loaded on			
	rail & Delivered			
3	Cans Acetylene Loaded in Car for			
	Forwarding to Miami, Fla.			
	40 Foot Car.	Empty		
	42 C.			

If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (*See section 7 of conditions.*)

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carriers or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

Shipper.

Per

Agent.

Per

Permanent post-office address of shipper

2

FOR

WEIGHT IN TONS	
GROSS	NET

CAR INITIALS AND NUMBER	C. L. TRANSFERRED TO OR L. C. L. LOADING NO.	DATE	WAYBILL NO.
WAB 24259		NOV 29 27H	

TO STATION: BALTIMORE MD — STATE: MD

137 Curtis Bay, MD

FROM STATION: 2000 Detroit, Mich — STATE: 8857

No.

ROUTE (SHOW EACH JUNCTION AND CARRIER IN ROUTE ORDER TO DESTINATION OF WAYBILL. INDICATE BY CHECK MARK WHETHER SHIPPER'S OR AGENT'S ROUTING): TOLEDO BO

SHIPPER'S ROUTING

AGENT'S ROUTING

FULL NAME OF SHIPPER (ORIGIN AND DATE, ORIGINAL CAR, TRANSFER FREIGHT BILL AND PREVIOUS WAYBILL REFERENCE AND ROUTING WHEN REBILLED): STUDE CORP

CONSIGNEE, ADDRESS (FINAL DESTINATION AND ADDITIONAL ROUTING)

ORD OF THE STUDEBAKER CORP
NTFY MUNSON STEAM SHIP CO

MARKED CAPACITY OF CAR		STENCILED WEIGHT OF CAR
ORDERED	FURNISHED	

WEIGHED

AT

GROSS

TARE

ALLOWANCE

NET

INSTRUCTIONS (REGARDING ICING, VENTILATION, HEATING, MILLING, WEIGHING, IF ICED, SPECIFY TO WHOM ICING SHOULD BE CHARGED):

(1ST) TRANSFER OR AUTHORITY FOR DIVERSION

(2ND) TRANSFER OR AUTHORITY FOR DIVERSION: 90331 59

(3RD) TRANSFER OR AUTHORITY FOR DIVERSION

(4TH) TRANSFER OR AUTHORITY FOR DIVERSION

EXAMINED

THIS WAYBILL SHALL BE USED FOR ALL UNCLE CONSIGNMENTS, WHETHER CARLOAD OR L.C.L. CARLOAD OR WHETHER LOCAL OR INTERLINE

Indicate by symbol in column provided ★ how weights were obtained for L. C. L. Shipments only: R—Railroad Warehouse Scale. S—Shipper's Agreement or Tested Weights. E—Estimated—Weigh and Correct

DESCRIPTION OF ARTICLES AND MARKS	COMMODITY NO.	★	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
3 AUTOS			10715				
AS			11200	119	13328		
3 SET BUMPERS DTD AND NAILED TO CAR FLOOR							
3 CART TOOLS DO DO							
FOR FORWARDING TO MIAMI FLA							

DESTINATION AGENT'S FREIGHT BILL No.

ALL YARD STAMPS TO BE PLACED ON BACK OF THIS WAYBILL IN SPACES PROVIDED.

JUNCTION FORWARDING AGENTS WILL SHOW JUNCTION STAMPS IN THE SPACE AND ORDER PROVIDED BELOW:

FIRST JUNCTION	SECOND JUNCTION	THIRD JUNCTION	FOURTH JUNCTION	DESTINATION AGENT WILL STAMP HERE STATION NAME AND DATE REPORTED

WAB 2259

TO STATION Curtis Bay STATE Md.

BALTIMORE MD

FROM STATION 8857 STATE

NOV 29 2?H

2000 Detroit, Mich

No.

ROUTE (Show each Junction and Carrier in Route Order to Destination of Waybill. Indicate by Check Mark whether Shipper's or Agent's Routing)

TOLEDO BO

Shipper's Routing

Agent's Routing

FULL NAME OF SHIPPER (Origin and Date, Original Car, Transfer Freight Bill and Previous Waybill Reference and Routing When Rebilled)

STUDE CORP

CONSIGNEE, ADDRESS (Final Destination and Additional Routing)

ORD OF THE STUDEBAKER CORP

NTFY MUNSON STEAM SHIP CO

Number of Car	Marked Capacity of Car		Stenciled Weight of Car
	Furnished	Ordered / Furnished	
88420			

INSTRUCTIONS (Regarding Icing, Ventilation, Heating, Milling, Weighing, If Iced, Specify to Whom Icing Should Be Charged)

WEIGHED

GROSS

TARE

ALLOWANCE

NET

(1st) Transfer or Authority for Diversion

(2nd) Transfer or Authority for Diversion

90359 59

(3rd) Transfer or Authority for Diversion

(4th) Transfer or Authority for Diversion

EXAMINED

THIS WAYBILL SHALL BE SUBJECT TO ALL UNIFORM CONSIGNMENTS, WHETHER CARLOAD OR LESS CARLOAD OR WHETHER LOCAL

Indicate by symbol in column provided ★ how weights were obtained for L. C. L. Shipments only. R—Railroad Warehouse Scale. S—Shipper's Agreement or Tested Weights. E—Estimated—Weigh and Correct

Description of Articles and Marks	Commodity No.	★	Weight	Rate	Freight	Advances	Prepaid
3 AUTOS			10715				
AS			1200	119	1332		
3 SET BUMPERS DTD AND NAILED TO CAR FLOOR							
3 CART. TOOLS DO DO							
FOR FORWARDING TO MIAMI FLA							

DESTINATION AGENT'S FREIGHT BILL No.

ALL YARD STAMPS TO BE PLACED ON BACK OF THIS WAYBILL IN SPACES PROVIDED.

Junction Forwarding Agents Will Show Junction Stamps in the Space and Order Provided Below:

First Junction	Second Junction	Third Junction	Fourth Junction	Destination Agent Will Stamp Herein Station Name and Date Received

Additional Junction Agents' Stamps Must Be Shown on Back of Waybill in Spaces Provided.

Form 3

825—WABASH RAILWAY COMPANY—825

MAKE CHECKS PAYABLE TO
THE BALTIMORE AND OHIO R. R. CO.

FREIGHT BILL

CONSIGNEE [illegible] BRICK CO.

DESTINATION NEY MUN N O

ROUTE TCRR

(POINT OF ORIGIN TO DESTINATION)

To THE BALTIMORE AND OHIO RAILROAD CO., AGENT. For Charges on Articles Transported:

COURT [illegible] Station

125-27

5031

192 FREIGHT BILL NO.

Agreement & Schedule A-3

WAY-BILLED FROM	WAY-BILL DATE AND No.	FULL NAME OF SHIPPER	CAR INITIALS AND No.
NAB DETROIT MICH	11-2-25 [illegible]	NATURE CAR	TTB 2425
POINT AND DATE OF SHIPMENT	**CONNECTING LINE REFERENCE**	**PREVIOUS WAY-BILL REFERENCES**	**ORIG. CAR INITIALS AND No.**

NUMBER OF PACKAGES, ARTICLES AND MARKS	WEIGHT	RATE	FREIGHT	ADVANCES	TOTAL
3 AUTOS	10715				
	2 11270	11	33.29		33.2
3 SET JUMPERS DET NAILED TO CAR FLOOR					
3 CRT TOOLS BOX					
FOR IND T MIAMI [illegible]					
			S/S Munlists 11/15/2		

LOCATION

WAREHOUSE	POST OR SECTION

TOTAL PREPAID

TOTAL

Received Payment for the Railroad MUNSON 192

Per H. A. Prince

AGENT — CASHIER OR COLLECTOR

(2)

The original paid freight bill must be surrendered for over charges to be refunded and must accompany claims for overcharge, loss or damage.

BALTIMORE TO MIAMI

MUNSON STEAMSHIP LINE

901 KEYSER BLDG.
Baltimore, Md.

141 NORTHEAST THIRD AVENUE,
Miami, Fla.

Government & Studebaker A-4

S. S. Munietta Voy. No. 22 No. M-7

Shipped by Studebaker Corp. of America Account of

Consigned to (ORDER OF NOTIFY) Studebaker Corp. of America
Melborn C. Phillips Inc. Miami, Fla.

Street Address

FREIGHT RATE DOES NOT INCLUDE MARINE INSURANCE

NOT INSURED unless endorsed in this space.

$ 3704.00

No. OF PKGS.	DESCRIPTION	WEIGHT	RATE	CHECK	FREIGHT AND CHARGES
1.	Coupe Automobile 2 Passengers				
1.	Regal Coupe " 4 "				
1.	" Victoria "				Collect
3.	Sets Bumpers				
3.	Cartons Tools	10435	1.55		161.74
	Stab-24259			Inland Ins.	133.28
				Insurance	5.56
					$ 300.58
attached to each car	2 head lights				
	2 Cow "				
	1 tail "				
	1 tire carrier & trim				
1. Bale Carpet in each car. 1 car grease set on top	1 Radiator Ornament				
	1 Ballard Battery				
	1 wind shield wiper 1. mirror				

It is agreed that the Munson Steamship Line and/or the Steamer accept(s) no responsibility for any consequences of delayed discharge, due to congested facilities at port of discharge including deterioration of cargo, loss of market or other consequential damages.

RISK ON WHARF

33. That merchandise on bulkhead wharf or in warehouse awaiting shipment, transshipment or delivery be at owner's risk of loss or damage by fire, flood, or other casualty, and of the giving away or falling or destruction in whole or part of the warehouse or the wharf of any structure thereon, not happening through the fault or negligence of carriers.

ICE BLOCKADES, QUARANTINES, STRIKES, ETC.

34. When the loading, transport, transshipment or delivery is prevented in consequence of ice, weather, and mic quarantine, sanitary measures, blockade, war, sedition, strikes, troubles, labor agitation, and all analogous circumstances whatever, the carriers shall be entitled to load, discharge, transship and/or warehouse or quarantine depot, or into a lighter, hulk or craft, and to deliver all or any part of the goods, whether the terms of the bond of lading or not, and all loss whatsoever, and all expenses of transshipment, forwarding or warehousing or Customs, and all extra expenses of whatsoever kind incurred in consequence of the above circumstances will be entirely for account of the shipper, consignee or party claiming the goods, even though some part of such extra expenses may be occasioned by the fault of the carriers, the Master and Owner being discharged from all responsibility on the goods being placed in charge of the Custom House or any Mercantile Agent or Consul.

35. Also, that if the ship is prevented by Quarantine from reaching her destination or making the delivery of the goods, or is detained at quarantine, the goods may be forthwith without previous notice to shipper, owner or consignee discharged into depots, lazarettos, hulks, craft or lighters, at the risk and expense of shipper, owner and consignee, all and any of them, and such discharge shall be deemed a full and final delivery of the goods, all risk, responsibility and expenses of the carrier thereafter, as carriers, bailee or otherwise, ending as soon as the goods are delivered from the ship's tackle or thereafter incurred, and all increased cost of such delivery shall be paid by shipper, owner and consignee, all and any of them, and the carrier may forthwith without previous notice proceed to the nearest safe port, or at ship's option to the nearest safe port to which the ship is bound, at the risk and expense of shipper, owner or consignee, all and any of them, and there land the goods or at the original port of discharge, at the risk and expense of shipper, owner or consignee, all and any of them, he and they paying freight from the original port of discharge and the carrier retaining a lien on the goods therefor and for all charges and expenses incurred, and for all increased cost of delivery; and all risks and expenses incurred thereafter shall be on account of shipper, owner or consignee, all and any of them.

36. In case of the bankruptcy or interdict of the port of delivery or transshipment or if, when such bankruptcy or interdict, the entering of the port should be considered by the Master unsafe by reason of disease, war or disturbances, he is to have the option of landing the goods at any other port which he may consider safe, at shippers or consignees risk and expense; and on the goods being placed in charge of the Custom House or any mercantile agent or consignee, or depositing the goods into the vessel addressed to the shipper or consignee if named, stating the landing and with whom deposited, the goods to be at shippers or consignee's risk and expense, and the master and owner discharged from all responsibility.

37. The goods shall be liable for all expense of mending, overage, reconditioning and gathering of loose cargo and contents of packages, and for any payment, expense, duty, tax or interest of whatsoever nature levied upon the shipowner or the steamer by the authorities at any port of transshipment or delivery or in connection with the goods herein described, and also for any payment, fine, expense, loss, damage or detention, howsoever sustained or incurred by the shipowner or steamer in consequence of illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents, or failure of the owner, consignee or agent to produce consular, Board of Health or other certificates to accompany the goods or otherwise comply with regulations of any kind whatsoever imposed with respect to the goods by the authorities at the ports of shipment or delivery. Cargo sweepings, dunnage and any unclaimed goods [illegible] shall be delivered by the master and owner to the receiver of wreck or other proper authority at the port of discharge, and the master and owner shall be discharged from all responsibility in respect thereof. Goods of live character in proportion to any apparent shortage, loss of weight or damage and shall be accepted as good and sound.

Shipped by Studebaker Corp. of America Account of

Consigned to (ORDER OF NOTIFY) Studebaker Corp. of America Miami, Fla.
Welborn C. Phillips Inc.

Street Address 5

FREIGHT RATE DOES NOT INCLUDE MARINE INSURANCE

NOT INSURED unless endorsed in this space.

3704.03

No. OF PKGS.	DESCRIPTION	WEIGHT	RATE	CHECK	FREIGHT AND CHARGES
1.	Coupe Automobile 2 Passengers				
1.	Regal Coupe " 4 "				Collect
1.	" Victoria "				
3.	Sets Bumpers				
3.	Cartons Tools	10435	1.55		161.74
	Wab-24259		Inland. Dst.		133.28
			Insurance.		5.56
					300.58
attached to each car	2 head lights 2 Cow " 1 tail " 1 tire carrier & trim				
1. Bal Carpet in each car. 1 car grease set on top	1 Radiator Ornament 1 Willard Battery 1 Wind Shield Upper	1. Mirror			

It is agreed that the Munson Steamship Line and or the Steamer accept (s) no responsibility for any consequences of delayed discharge, due to congested facilities at port of discharge including deterioration of cargo, loss of market or other consequential damages.

RISK ON WHARF

33. That merchandise on bulkhead wharf or in warehouse awaiting shipment, transshipment or delivery be at owner's risk of loss or damage by fire, flood, or other casualty, and or the giving away or falling or destruction in whole or part of the warehouse or the wharf of any structure thereon, not happening through the fault or negligence of carriers.

ICE BLOCKADES, QUARANTINES, STRIKES, ETC.

34. When the loading, transport, transshipment or delivery is prevented in consequence of ice, weather, epidemic quarantine, sanitary measures, blockade, war, sedition, strikes, troubles, labor agitation, and all analogous circumstances whatever, the carriers shall be entitled to load, discharge, transship, put into warehouse or quarantine depot, or into a lighter, hulk or craft, and to deliver all or any part of the goods, whether the terminus of the voyage or not, and all the risk and all expenses of transshipment, forwarding or warehousing or Customs, and all extra expenses of whatsoever kind incurred in consequence of the above circumstances will be entirely for account of the shipper, consignee or party claiming the goods, even though some part of such extra expenses may be occasioned by the fault of the carriers; the Master and Owner being discharged from all responsibility on the goods being placed in charge of the Custom House or any Mercantile Agent or Consul.

35. Also, that if the ship is prevented by Quarantine from reaching her destination, or inability to discharge on account of the goods, or is detained at quarantine, the goods may be forthwith without previous notice to shipper, owner or consignee discharged into depots, storehouses, hulks, crafts or lighters, at the risk and expense of shipper, owner and consignees, all and any of them, and such discharge shall be deemed a full and final delivery of the goods, all risk, responsibility and expenses of the carrier therefor, as carriers, bailee or otherwise, ending as soon as the goods are delivered from the ship's tackle, and all expenses thereby or thereafter incurred, and all increased cost of such delivery shall be paid by shipper, owner and consignee, all and any of them, the carrier retaining a lien on the goods therefor; but should the vessel or goods not be admitted, or such discharge be impracticable, or so in the master's opinion, the carrier may forthwith without previous notice proceed to the nearest safe port, or at ship's option to the nearest safe port to which the ship is bound, at the risk and expense of shipper, owner and consignee; all and any of them, and there land the goods as if at the original port of discharge, at the risk and expense of shipper, owner and consignee, all and any of them, he and they paying freight from the original port of discharge, and the carrier retaining a lien on the goods therefor and for all such charges and expenses incurred, and for all increased cost of delivery; and all risks and expenses incurred thereafter shall be on account of shipper, owner or consignee.

36. In case of the blockade or interdict of the port of delivery or transshipment, or if, without such blockade or interdict, the entering of the port should be considered by the Master unsafe by reason of disease, war or disturbances, he is to have the option of landing the goods at any other port which he may consider safe, at shippers or consignee's risk and expense, and on the goods being placed in charge of the Custom House or any mercantile agent or consignee's risk and expense; and a letter being put into the post addressed to the shipper or consignee if named, stating the landing and with whom deposited, the goods to be at shipper's or consignee's risk and expense; and the master and owner discharged from all responsibility.

37. The goods shall be liable for all expense of mending, repacking, reconditioning and gathering of loose cargo and contents of packages, and for any payment, expense, duty, tax or impost of whatsoever nature levied upon the shipowner or the steamer by the authorities at any port of transshipment or elsewhere for or in connection with the goods herein described, and also for any payment, fine, expense, loss damage or detention, howsoever sustained or incurred by the shipowner or steamer in consequence of illegal, incorrect or insufficient marking, numbering or addressing of packages, or description of their contents, or failure of the owner, shipper or consignee of the cargo to procure consular, Board of Health or other certificates to accompany the goods, or in comply with regulations of any kind whatsoever imposed with respect to the goods by the authorities at the ports of shipment or delivery. Cargo sweepings found in the ship and any unclaimed goods not delivered or transshipped for shall be allowed to the various consignees of goods of like character in proportion to any apparent shortage, loss of weight or damage and shall be accepted as good and complete delivery.

38. Live animals, plants and any other kind of perishable goods will be carried in ordinary cargo compartments or holds, unless it has been expressly agreed for a special rate of freight, that such goods will be carried in a refrigerated, cold or specially ventilated compartment. Where such goods of a perishable nature are carried in ordinary compartments and a special rate of freight is not paid, the shipper represents that such goods do not need and the shipowner will not be required to give them any other treatment than that given to ordinary non-perishable cargo. The refrigerating, chilling or ventilating machinery shall be considered part of the machinery and appurtenances of the vessel, and all exceptions mentioned elsewhere in this bill of lading shall be applicable thereto and to the cargo carried in the refrigerated compartments.

Baltimore (Date) December 11th 1929.

FOR MUNSON STEAMSHIP LINE, Agents

THIS BILL OF LADING MUST BE SURRENDERED BEFORE DELIVERY

Received $ (2)
to apply in prepayment of the charge on the property described hereon.

Agent or Cashr

Government & Studebaker A-5

Dec. 21, 7

Mr. W. E. Neilson, Agent,
Baltimore & Ohio R.R.,
Baltimore, Md.

Dear Sir:-

S.S. MUNLISTO V 22 S.B.

We areenclosing herewith our check #13[illegible]0 in amount $386.96 in payment of the following bills, which we kindly ask that you receipt and return by early mail:

Freight Bill No.	Shipper	B/L	Amount.
357	American Steel Co. of Cuba	H 41	2.75
72151	"	H 41	1.48
80999	Sigmond Gold Co.	H 15	6.10
71280	U. S. Glass Co.	H 7	1.50
91454	Knouse & Fohl Canning Co.	J 17	79.38 -
90332	F. Studebaker Co.p.	M 8	119.00 -
90331	"	M 7	133.28 -
86609	Bethlehem Steel Co.	M 18	43.47 -

Yours very truly,

MUNSON STEAMSHIP LINE

E. T. Cunningham

Asst. Local Manager.

Government + Studebaker v. 2 - 6

THE STUDEBAKER CORPORATION

Please address all correspondence to the department

DETROIT, MICHIGAN U.S.A.

November 29, 1927.

RECEIVED

Mr. W. P. Coria, Local Mgr.,
Munson Steamship Lines,
Keyser Building,
Baltimore, Md.

Dear Sir:

You will find enclosed two original Wabash RR bills of lading covering six automobiles destined Miami, Florida, which we shipped from Detroit, November 29th in cars Wabash 24259 and 24197, in care of your company at Baltimore.

In exchange for these receipts, please issue your steamship ladings, one set of documents for each carload - each set to consist of two negotiable and three non-negotiable copies - both ladings to be drawn to order of the Studebaker Corporation of America, notify Wellborn C. Phillips, Inc., Miami, Fla. Listed on the inland ladings are the bumpers, loose, and the cartons or tools, and this equipment should also, of course, be shown on the Steamship Ladings.

Inland and ocean freight charges are to be billed COLLECT at destination which, of course, will mean advancing the full inland charges forward for collection with the ocean freight from the consignee at Miami.

IMPORTANT: Please mail the two originals and two copies of each steamship lading direct to Mr. V. C. Winters, Cashier, Studebaker Corporation of America, Market at 14th St., Jacksonville, Fla. - SPECIAL DELIVERY MAIL.

We trust you will see that the automobiles and equipment are cleared from Baltimore on the earliest available steamer, and when mailing the undersigned copies of the ocean ladings, please advise the actual clearance record - name of steamer and sailing date.

Yours very truly,

Division Traffic Manager.

m 114

Made in U. S. A. 2nd Sheet

(For use in connection with Domestic Order Bill of Lading adopted by Carriers in Official, Southern and Western Classification Territories, March 15, 1922)

THIS SHIPPING ORDER must be legibly filled in, in Ink, in Indelible Pencil, or in Carbon and retained by the Agent.

Shipper's No.

WABASH RAILWAY COMPANY

Agent's No.

RECEIVE, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order,

at ..... 192..

from .....

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

The surrender of the Original ORDER Bill of Lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by the bill of lading will not be permitted unless provided by law or unless permission is indorsed on the original bill of lading or given in writing by the shipper.

Consigned to ORDER OF ..... (Mail or street address of consignee—For purposes of notification only.)

Destination ..... State of ..... County of .....

Notify .....

At ..... State of ..... County of .....

Route .....

(Delivering carrier) Car Initial ..... Car No. .....

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN

If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (*See section 7 of conditions.*)

.....
(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

.....

Received $.....
to apply in prepayment of the charges on the property described hereon.

.....
Agent or Cashier.

Per .....

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$.....

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carriers or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

WABASH RAILWAY COMPANY

Agent's No.

RECEIVE, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order,

at ..... 1-24 ..... 192..7

from .....

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

The surrender of the Original ORDER Bill of Lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by the bill of lading will not be permitted unless provided by law or unless permission is indorsed on the original bill of lading or given in writing by the shipper.

Consigned to ORDER OF ..... (Mail or street address of consignee—For purposes of notification only.)

Destination ..... State of ..... County of .....

Notify .....

At ..... State of ..... County of .....

Route .....

(Delivering carrier) ..... Car Initial ..... Car No. .....

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN

If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. (*See section 7 of conditions.*)

.....
(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

.....

Received $.....
to apply in prepayment of the charges on the property described hereon.

.....
Agent or Cashier.

Per .....

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$.....

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carriers or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

..... per .....

..... Shipper. ..... Agent.

Per ..... Per .....

Permanent post-office address of shipper .....

2

CONTRACT TERMS AND CONDITIONS

SEC. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier or party in possession of all or any of said property shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner of the property, or the carrier's employees, or for loss or damage resulting from the nature of the property, or for any loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file, or after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and a reasonable time for delivery at destination or at the port of export (if intended for export) has been allowed, or for loss, damage, or delay caused by fire occurring before the property has been placed on the dock or in the vessel at the port of export (if intended for export), or before actual transportation of the property has commenced, or after the property has been delivered to or placed at the disposal of the party entitled to receive it, unless such loss, damage, or delay was caused by the negligence of the carrier or party in possession. Except in case of negligence, the carrier or party in possession shall not be liable for loss, damage, or delay resulting from the character of the property, or resulting from a defect or vice in the property, or from riots or strikes, or from explosion, bursting of boilers or breakage of shafts, or from compliance with any order or requirement of any military authority, or any agent thereof, having jurisdiction, or from compliance with any order or requirement of any civil authority or any agent thereof having jurisdiction, or from seizure under or compliance with quarantine regulations or orders, or comply with any regulations of authorities, or for the carrier's failure to comply with any regulations of quarantine, or for the carrier's compliance with any rules or regulations relating to the carriage of explosives or other dangerous articles, or from any cause whatsoever not the negligence of the carrier, and the burden of proof shall be upon the carrier or party claiming exemption to show that neither its negligence nor that of its employees caused or contributed to the loss, damage, or delay for which exemption is claimed. The carrier shall not be liable for loss or damage occurring while the property is stopped in transit on account of the rules, regulations, or customs of railroads, railroad companies, or railroad employees, or on account of any embargo, or for any mistake or inaccuracy in the description of the property, or in the destination, or in the consignee's address, or for delay or loss or damage thereto that may occur after the property has been delivered to the consignee or party entitled to receive it, has been made. Except in case of negligence, the carrier or party in possession shall not be liable for loss, damage, or delay resulting from a defect or vice in the property, or

SEC. 2. (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property to destination by any railroad or route between the point of shipment and the point of destination, and in case of quarantine or the prevalence of contagious disease at any point on the line of its road, to unload and hold said property at such point or any other point on its line, or elsewhere, during the quarantine period. Every carrier shall have the right to make reasonable rules and regulations governing the receipt and delivery of property transported by it, and may refuse to receive property for transportation which in its judgment may injure other property or persons, or which may be contraband, or the carriage of which may be prohibited by law, or which may be of a dangerous nature. Every carrier shall have a lien upon all property received by it for transportation under this bill of lading for all freight, demurrage, and other lawful charges accruing on said property, and may hold the same until said charges are paid, and if said property, or any part thereof, is not claimed by the consignee or owner within a reasonable time after the arrival of the property at destination or delivery to the consignee, the carrier may notify the consignee or owner by letter mailed to his last known address, or by publication in a newspaper of general circulation at the place of delivery, that said property will be sold at public auction to the highest bidder, at such time and place as may be designated by the carrier, and if the charges thereon are not paid when the property is struck off, the property may be resold at public or private sale, without further notice to the consignee or owner, and the proceeds of such sale, after deducting the charges thereon and the expenses of the sale, shall be paid over to the consignee or owner, or if unclaimed, to the general average fund, or to the person entitled thereto. Every carrier over whose route cotton may pass shall have a lien for the freight charges on any cotton delivered to it for transportation, whether such freight charges be payable at destination or elsewhere, and may withhold such cotton from delivery until such charges are paid, and may sell the same to pay such charges, at such time and upon such notice as is provided by the laws of the State where such cotton is to be delivered. Every carrier shall have a lien upon all property in its possession for any general balance due it from the consignor or consignee of such property, and may hold possession of such property for such balance until it is paid, and may sell the same to pay such balance at such time and upon such notice as is provided by the laws of the State where such property is held by such carrier, and may become the purchaser of the property at such sale.

(b) Claims for damage or injury to property must be made in writing to the originating or delivering carrier within four months after delivery of the property, or in case of export traffic within nine months after delivery at the port of export, or in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed; and suits for damage, injury, or delay shall be instituted only within two years and one day after delivery of the property, or in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed; *Provided*, That in case the claim shall not be made or suit instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claim will not be paid. Unless otherwise agreed in writing between the carrier and the claimant, no carrier shall be required to entertain, consider, or pay any claim unless it is made in writing within six months after the delivery of the property, or in case of export traffic within nine months after delivery at the port of export, or within a reasonable time after a claim would arise for failure to deliver property, and suit shall be instituted not later than two years and one day after notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are made for a part only of the property delivered, suit may be instituted for the balance of the property at any time thereafter. No carrier hereunder shall be liable for any claim for loss, damage, injury, or delay of any character whatsoever unless presented within the time specified herein, and no suit shall be sustained against any carrier hereunder for any such claim unless such suit is instituted within the time specified herein, and any such claim not so presented and any such suit not so instituted shall be forever barred. Where there is a failure to make delivery, or a refusal by the consignee or owner to receive the property, or any part thereof, or to pay the freight charges thereon, or to comply with any other requirement of the carrier in connection with the property, the carrier may, at its option, hold the property, or any part thereof, subject to the liability of a warehouseman, and/or may remove the property, or any part thereof, to a warehouse, or may keep the property, or any part thereof, in the car in which it is loaded, or may place the property, or any part thereof, in the car in which it is loaded, or may place the property, or any part thereof, in the car in which it is loaded, or may place

WAYBILL—PREFERRED MOVEMENT

Weight in Tons: Gross / Net

CAR INITIALS AND NUMBER: WAB 24197

C. L. Transferred to or L. C. L. Loading No.

DATE: NOV 29 27H

WAYBILL No. 8858

TO STATION: BALTIMORE MD

STATE: Md.

Curtis Bay,

FROM STATION: 2000 Detroit, Mich.

STATE

ROUTE (Show each Junction and Carrier in Route Order to Destination of Waybill. Indicate by Check Mark whether Shipper's or Agent's Routing).

TOLEDOMBO

Shipper's Routing

Agent's Routing

No.

FULL NAME OF SHIPPER (Origin and Date, Original Car, Transfer Freight Bill and Previous Waybill Reference and Routing When Reshipped).

STUDE CORP

CONSIGNEE, ADDRESS (Final Destination and Additional Routing)

ORD OF THE STUDEBAKER CORP
NTF MUNSON STEAM SHIP COMPANY

INSTRUCTIONS (Regarding Icing, Ventilation, Heating, Milling, Weighing, Etc. If Iced, Specify to Whom Icing Should be Charged)

9033

Length of Car Ordered	Length of Car Furnished	Marked Capacity of Car Ordered	Marked Capacity of Car Furnished	Stenciled Weight of Car
36				

AT

GROSS

TARE

ALLOWANCE

NET

INSPECTION AND WEIGHING BUREAU
CHECKED SHIPPERS WEIGHT
1578
UNDER WEIGHT AGREEMENT
EXPIRES

(1st) Transfer or Authority for Diversion

(2nd) Transfer or Authority for Diversion

59

(3rd) Transfer or Authority for Diversion

(4th) Transfer or Authority for Diversion

THIS WAYBILL SHALL BE USED FOR ALL SINGLE CONSIGNMENTS, WHETHER L. C. L. OR CARLOAD OR WHETHER LOCAL OR INTERSTATE

Indicate by symbol in column provided ★ how weights were obtained for L. C. L. Shipments only. R—Railroad Warehouse Scale. S—Shipper's Agreement or Tested Weights. E—Estimated—Weight and Correct

DESCRIPTION OF ARTICLES AND MARKS	Commodity No.	★	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
3 AUTOS			9713				
AS			10000	119	11900		
3 SET BUMPER DET AND NAILED TO FRT CAR FLOOR							
3 CART TOOLS NAILED TO FRT CAR FLOOR							
FOR FORWARDING TO MIAMI FLA							

DESTINATION AGENT'S FREIGHT BILL No.

ALL YARD STAMPS TO BE PLACED ON BACK OF THIS WAYBILL IN SPACES PROVIDED.

Junction Forwarding Agents Will Show Junction Stamps in the Space and Order Provided Below:

First Junction | Second Junction | Third Junction | Fourth Junction

Destination Agent Will Stamp Herein Station Name and Date Reported

CAR INITIAL AND NUMBER: WAB 24197

C. L. TRANSFERRED TO OR L. C. L. LOADING NO.

DATE: NOV 29 27H

WAYBILL No. 58358

TO STATION: 487 Curtis Bay, Md.
BALTIMORE MD

STATE

FROM STATION: 2000 Detroit, Mich.

STATE

No.

ROUTE (SHOW EACH JUNCTION AND CARRIER IN ROUTE ORDER TO DESTINATION OF WAYBILL. INDICATE BY CHECK MARK WHETHER SHIPPER'S OR AGENT'S ROUTING).

TOLEDO MBO

SHIPPER'S ROUTING

AGENT'S ROUTING

FULL NAME OF SHIPPER (ORIGIN AND DATE, ORIGINAL CAR, TRANSFER FREIGHT BILL AND PREVIOUS WAYBILL REFERENCE AND ROUTING WHEN REBILLED).

STUDE CORP

CONSIGNEE, ADDRESS (FINAL DESTINATION AND ADDITIONAL ROUTING)

OBD OF THE STUDEBAKER CORP
NTF MUNSON STEAM SHIP COMPANY

DEC

LENGTH OF CAR ORDERED	LENGTH OF CAR FURNISHED	MARKED CAPACITY OF CAR ORDERED	MARKED CAPACITY OF CAR FURNISHED	STENCILED WEIGHT OF CAR
36				

INSTRUCTIONS (REGARDING ICING, VENTILATION, HEATING, MILLING, WEIGHING, ETC. IF ICED, SPECIFY TO WHOM ICING SHOULD BE CHARGED)

9033

AT

GROSS

TARE

ALLOWANCE

NET

INSPECTION AND WEIGHING BUREAU
EXTENSION
SHIPPERS WEIGHT
1578
LOADED WITHOUT AGREEMENT
EXPIRED

(1st) TRANSFER OR AUTHORITY FOR DIVERSION

(2nd) TRANSFER OR AUTHORITY FOR DIVERSION

59

(3rd) TRANSFER OR AUTHORITY FOR DIVERSION

(4th) TRANSFER OR AUTHORITY FOR DIVERSION

THIS WAYBILL SHALL BE USED FOR ALL SINGLE CONSIGNMENTS, WHETHER L. C. L. CARLOAD OR WHETHER LOCAL OR INTERLINE

Indicate by symbol in column provided ★ how weights were obtained for L. C. L. Shipments only. R—Railroad Warehouse Scale. S—Shipper's Agreement or Tested Weights. E—Estimated—Weigh and Correct

DESCRIPTION OF ARTICLES AND MARKS	COMMODITY No.	★	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
3 AUTOS			9713				
AS			10000	119	11900		
3 SET BUMPER DET AND NAILED TO FRT CAR FLOOR							
3 CART TOOLS NAILED TO FRT CAR FLOOR							
FOR FORWARDING TO MIAMI FLA							

DESTINATION AGENT'S FREIGHT BILL No.

ALL YARD STAMPS TO BE PLACED ON BACK OF THIS WAYBILL IN SPACES PROVIDED.

JUNCTION FORWARDING AGENTS WILL SHOW JUNCTION STAMPS IN THE SPACE AND ORDER PROVIDED BELOW:

FIRST JUNCTION	SECOND JUNCTION	THIRD JUNCTION	FOURTH JUNCTION

DESTINATION AGENT WILL STAMP HEREIN STATION NAME AND DATE REPORTED

ADDITIONAL JUNCTION AGENTS' STAMPS MUST BE SHOWN ON BACK OF WAYBILL IN SPACES PROVIDED.

Form 3

825—WABASH RAILWAY COMPANY—825

MAKE CHECKS PAYABLE TO THE BALTIMORE AND OHIO R. R. CO.

FREIGHT

CONSIGNEE [illegible]

DESTINATION NEW MUNSON S.S.

ROUTE (POINT OF ORIGIN TO DESTINATION)

12-5-27 192

(20 32)
90332

FREIGHT BILL NO.

To THE BALTIMORE AND OHIO RAILROAD CO., Dr. For Charges on Articles Transported:

WAY-BILLED FROM	WAY-BILL DATE AND No.	FULL NAME OF SHIPPER	CAR INITIALS AND No.
POINT AND DATE OF SHIPMENT	CONNECTING LINE REFERENCE	PREVIOUS WAY-BILL REFERENCES	ORIG. CAR INITIALS AND No.
WAR DETROIT MICH	11-9-27	88 8	WAR 97

NUMBER OF PACKAGES, ARTICLES AND MARKS	WEIGHT	RATE	FREIGHT	ADVANCES	TOTAL
3 AUTOS 3713 AS	10000	119	119.00		119.00
3 SET BURNERS DET NAILED T F T CAR FLOOR					
2 CRT TOOLS WILLYS T F T CAR FLOOR					
F F DOG TO MIAMI FLA					

J. S. Municio 12/15

COPY

LOCATION

WAREHOUSE	POST OR SECTION

TOTAL PREPAID MUNSON S.S. LINE TOTAL

Received Payment for the Railroad 192

Per

AGENT CASHIER OR COLLECTOR

H. A. Prince

(3)

The original paid freight bill must be surrendered for over charges to be refunded and must accompany claims for overcharge, loss or damage.

BALTIMORE TO MIAMI

MUNSON STEAMSHIP LINE

901 KEYSER BLDG.
Baltimore, Md.

141 NORTHEAST THIRD AVENUE
Miami, Fla.

Government & Studebaker B/L #4

S. S. Muinkisto Voy. No. 22 No. M-8

Shipped by Studebaker Corp. of America Account of

Consigned to (ORDER OF NOTIFY) Studebaker Corp of America Melborn A. Phillips, Inc Miami, Fla.

Street Address

FREIGHT RATE DOES NOT INCLUDE MARINE INSURANCE.

NOT INSURED unless endorsed in this space.

$ 3,007.00

NO. OF PKGS.	DESCRIPTION	WEIGHT	RATE	CHECK	FREIGHT AND CHARGES
2.	Sedan Automobiles.				Collect
1.	Erskine Cust. Coupe Automobile.				
3.	Sets Bumpers.				
3.	Cartons Tools.				
	Car Stab. 74197.	4501.55			146.48
		Inland Frt.			119.00
		Insurance.			4.51
					$ 269.99
					4.51
					265.48
Attached to each car	2 headlights 2 cow lights 1 tail light 1 tire carrier & rim 1 Radiator ornament 1 Willard Battery 1 wind shield wiper 1 mirror 1 Bal Iron 2 Bal floor covering.				
Checks 9 pcs bumpers					

It is agreed that the Munson Steamship Line and/or the Steamer accept(s) no responsibility for any consequences of delayed discharge, due to congested facilities at port of discharge including deterioration of cargo, loss of market or other consequential damages.

RISK ON WHARF

33. That merchandise on bulkhead wharf or in warehouse awaiting shipment, transshipment or delivery be at owner's risk of loss or damage by fire, flood, or other casualty, and/or the giving away or failing of destruction in whole or part of the warehouse or the wharf of any structure thereon, not happening through the fault or negligence of carriers.

ICE BLOCKADES, QUARANTINES, STRIKES, ETC.

34. When the loading, transport, transshipment or delivery is prevented in consequence of ice, weather, epidemic quarantine, sanitary measures, blockade, war, sedition, strikes, troubles, labor agitation, and all analogous circumstances whatever the carriers shall be entitled to load, discharge, transship, put into warehouse or quarantine depot, or into a lighter, hulk or craft, and to deliver all or any part of the goods, whether the terminus of the voyage or not, and all risks whatsoever, and all expenses of transshipment, forwarding or warehousing or Customs, and all extra expenses of whatsoever kind incurred in consequence of the above circumstances will be entirely for account of the shipper, consignee or party claiming the goods; even though some part of such extra expenses may be occasioned by the fault of the carriers; the Master and Owner being discharged from all responsibility on the goods being placed in charge of the Custom House or any Mercantile Agent or Consul.

35. Also, that if the ship is prevented by Quarantine from reaching her destination, or making due delivery of the goods, or is detained at quarantine, the goods may be forthwith without previous notice to shipper, owner or consignee discharged into depots, lazzarettos, hulks, crafts or lighters, at the risk and expense of shipper, owner and consignee, all and any of them, and such discharge shall be deemed a full and final delivery of the goods, all risk, responsibility and expenses of the carrier therefor, as carriers, bailee or otherwise, ending as soon as the goods are delivered from the ship's tackle, and all expenses thereby or thereafter incurred, and all increased cost of such delivery shall be paid by shipper, owner and consignee, all and any of them, the carrier retaining a lien on the goods therefor; but should the vessel or goods not be admitted, or such discharge be impracticable, or so in the master's opinion, the carrier may forthwith without previous notice proceed to the nearest safe port, or at ship's option to the nearest safe port to which the ship is bound, at the risk and expense of shipper, owner and consignee, all and any of them, and there land the goods as if at the original port of discharge, at the risk and expense of shipper, owner and consignee, all and any of them, he and they paying freight from the original port of discharge, and the carrier retaining a lien on the goods therefor and for all costs, charges and expenses incurred, and for all increased cost of delivery; and all risks and expenses incurred thereafter shall be on account of shipper, owner or consignee.

36. In case of the blockade or interdict of the port of delivery or transshipment, or if, without such blockade or interdict, the entering of the port should be considered by the Master unsafe by reason of disease, war or disturbances, he is to have the option of landing the goods at any other port which he may consider safe, at shipper's or consignee's risk and expense; and on the goods being placed in charge of the Custom House or any mercantile agent or consul, and a letter being put into the post addressed to the shipper or consignee if named, stating the landing and with whom deposited, the goods to be at shipper's or consignee's risk and expense, and the master and owner discharged from all responsibility.

37. The goods shall be liable for all expense of mending, cooperage, reconditioning and gathering of loose cargo and contents of packages, and for any payment, expense, duty, tax or impost of whatsoever nature levied upon the shipowner or the steamer by the authorities at any port of transshipment or discharge for or in connection with the goods herein described; and also for any payment, fine, expense, loss, damage or detention, howsoever sustained or incurred by the shipowner or steamer in consequence of illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents, or failure of the owner, shipper or consignee of the cargo to procure consular, Board of Health or other certificates to accompany the goods, or to comply with regulations of any kind whatsoever imposed with respect to the goods by the authorities at the ports of shipment or delivery. Cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for shall be allocated to the various consignees of goods of like character in proportion to any apparent shortage. Loss of weight or damage and shall be accepted as good and complete delivery.

38. Green fruits, vegetables, meats and any other kind of perishable goods will be carried in ordinary cargo compartments or holds, unless it has been expressly [illegible] Where such goods of a perishable

Shipped by Studebaker Corp. of America Account of

Consigned to (ORDER OF NOTIFY) Studebaker Corp. of America
Melborn A. Phillips, Inc Miami, Fla.

Street Address

FREIGHT RATE DOES NOT INCLUDE MARINE INSURANCE

NOT INSURED unless endorsed in this space.

$ 3,007.00

NO. OF PKGS.	DESCRIPTION	WEIGHT	RATE	CHECK	FREIGHT AND CHARGES
2.	Sedan Automobiles.				Collect
1.	Erskine Cust. Coupe Automobile				
3.	Sets Bumpers.				
3.	Cartons Tools.				
	Car Stab. 24197.	4501.55			146.48
		Inland Frt.			119.00
		Insurance.			4.51
					$ 269.99
					4.51
					265.48
Attached to each car	2. head lights 2. cow lights 1. tail light 1. tire carrier & rim 1. Radiator ornament 1. Willard Battery 1. wind shield wiper 1. mirror 1 Bel Iron 2. Bal. floor Covering.				
Checks 9. pcs bumpers					

It is agreed that the Munson Steamship Line and/or the Steamer accept(s) no responsibility for any consequences of delayed discharge, due to congested facilities at port of discharge including deterioration of cargo, loss of market or other consequential damages.

RISK ON WHARF

35. That merchandise on bulkhead wharf or in warehouse awaiting shipment, transshipment or delivery be at owner's risk of loss or damage by fire, flood, or other casualty, and/or the giving away or failing or destruction in whole or part of the warehouse or the wharf of any structure thereon, not happening through the fault or negligence of carriers.

ICE BLOCKADES, QUARANTINES, STRIKES, ETC.

34. When the loading, transport, transshipment or delivery is prevented in consequence of ice, weather, epidemic, quarantine, sanitary measures, blockade, war, sedition, strikes, troubles, labor agitation, and all analogous circumstances whatever the carriers shall be entitled to load, discharge, transship, put into warehouse or quarantine depot, or into a lighter, hulk or craft, and to deliver all or any part of the goods, whether the termination of the voyage or not, and all risks whatsoever, and all expenses of transshipment, forwarding or warehousing or Customs, and all extra expenses of whatsoever kind incurred in consequence of the above circumstances will be entirely for account of the shipper, consignee or party claiming the goods; even though some part of such extra expenses may be occasioned by the fault of the carriers; the Master and Owner being discharged from all responsibility on the goods being placed in charge of the Custom House or any Mercantile Agent or Consul.

35. Also, that if the ship is prevented by Quarantine from reaching her destination, or making due delivery of the goods, or is detained at quarantine, the goods may be forthwith without previous notice to shipper, owner or consignee, discharged into depots, lazzarettos, hulks, crafts or lighters, at the risk and expense of shipper, owner and consignee, all and any of them, and such discharge shall be deemed a full and final delivery of the goods, all risk, responsibility and expenses of the carrier therefor, as carriers, bailees or otherwise, ending as soon as the goods are delivered from the ship's tackle, and all expenses thereby or thereafter incurred, and all increased cost of such delivery shall be paid by shipper, owner and consignee, all and any of them, the carrier retaining a lien on the goods therefor; but should the vessel or goods not be admitted, or such discharge be impracticable, or so in the master's opinion, the carrier may forthwith without previous notice proceed to the nearest safe port, or at ship's option to the nearest safe port to which the ship is bound, at the risk and expense of shipper, owner and consignee, all and any of them, and there land the goods as if at the original port of discharge, at the risk and expense of shipper, owner and consignee, all and any of them, and there land original port of discharge, and the carrier retaining a lien on the goods therefor and for all costs, charges and expenses incurred, and for all increased cost of delivery; and all risks and expenses incurred thereafter shall be on account of shipper, owner or consignee.

36. In case of the blockade or interdict of the port of delivery or transshipment, or if, without such blockade or interdict, the entering of the port should be considered by the Master unsafe by reason of disease, war or disturbances, he is to have the option of landing the goods at any other port which he may consider safe, at shipper's or consignee's risk and expense; and on the goods being placed in charge of the Custom House or any mercantile agent or consul, and a letter being put into the post addressed to the shipper or consignee if named, stating the landing and with whom deposited, the goods to be at shipper's or consignee's risk and expense, and the master and owner discharged from all responsibility.

37. The goods shall be liable for all expense of mending, cooperage, reconditioning and gathering of loose cargo and contents of packages, and for any payment, expense, duty, tax or impost of whatsoever nature levied upon the shipowner or the steamer by the authorities at any port of transshipment or discharge for or in connection with the goods herein described; and also for any payment, fine, expense, loss, damage or detention, howsoever sustained or incurred by the shipowner or steamer in consequence of illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents, or failure of the owner, shipper or consignee of the cargo to procure consular, Board of Health or other certificates to accompany the goods, or to comply with regulations of any kind whatsoever imposed with respect to the goods by the authorities at the ports of shipment or delivery; Cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for shall be allocated to the various consignees of goods of like character in proportion to any apparent shortage, loss of weight or damage and shall be accepted as good and complete delivery.

38. Green fruits, vegetables, meats and any other kind of perishable goods will be carried in ordinary cargo compartments or holds, unless it has been expressly agreed for a special rate of freight, that such goods will be carried in a refrigerated, chilled or specially ventilated compartment. Where such goods of a perishable nature are carried in ordinary compartments and a special rate of freight is not paid, the shipper represents that such goods do not need, and the shipowner will not be required to give them, any other treatment than that given to ordinary non-perishable cargo. The refrigerating, chilling or ventilating machinery shall be considered part of the machinery and appurtenances of the vessel, and all exceptions mentioned elsewhere in this bill of lading shall be applicable thereto and to the cargo carried in the refrigerated compartments.

Baltimore (Date) December 15th 1927

W. P. Corra.

FOR MUNSON STEAMSHIP LINE, Agents

THIS BILL OF LADING MUST BE SURRENDERED BEFORE DELIVERY

Received $ (3)

to apply in prepayment of the charge on the property described hereon.

BILL OF LADING

SUBJECT TO TERMS OF THIS CONTRACT, WHICH ARE HEREBY MUTUALLY AGREED UPON AS FOLLOWS:

GENERAL PROVISIONS

1. Received in apparent good order and condition except as otherwise noted herein the number of packages or pieces of goods or articles, weight, contents and value unknown, marked and numbered as per margin and to be carried to the port of discharge, or so near thereto as she can safely get, always afloat, and there to be delivered to the consignee or his assigns, or to the holder of the order, on payment of freight and charges as per rate in force at the time of shipment and subject to the conditions hereof. One of the Bills of Lading must be surrendered duly endorsed in exchange for the goods or delivery order. In accepting this Bill of Lading the shipper, consignee and owner of the goods and the holder of this Bill of Lading agree to be bound by all the stipulations, exceptions and conditions on the back hereof, whether written, typed or printed, as fully as if signed by them, and to accept any local customs or privileges at the port of discharge.

2. To be carried in the vessel named herein or in any substituted vessel of the Carrier's Line, with liberty to call at any port or ports in any order, to sail with or without pilots, to tow and assist vessels in all situations, to go to any dock, and to shift berths, and to carry goods to and from any other vessel or vessels whether or not in the direction of the above mentioned port of discharge and, when such port cannot be reached, to discharge at any other port which the Carrier may select and there to be delivered as aforesaid. The Carrier shall not be liable for any loss or damage occasioned by the exercise of this liberty.

3. The Carrier or his agents may, without notice, but without obligation, carry goods of all kinds on deck or under deck, without liability for any consequences thereof, and such goods are carried at the risk of the shipper, consignee or owner, and the vessel shall have a lien thereon for all charges, including those for moving and handling, stowing and trimming, and for all expenses incurred in connection therewith, and the Carrier shall not be responsible for any loss or damage to or delay in the delivery of such goods, whether caused by the negligence of the Carrier or otherwise howsoever. Goods carried on deck are not covered by insurance unless specially agreed in writing.

4. The Carrier shall not be liable for any loss or damage to or delay in the delivery of any goods caused by the act, neglect or default of the shipper, consignee or owner of the goods, their agents or servants, or by any cause or accident beyond the Carrier's control whether the same existed before the commencement of the voyage or arises during the voyage, or before the arrival of the vessel at the port of loading or after the departure therefrom, or at any time whatsoever.

5. The Carrier shall not be liable for any loss or damage to or delay in the delivery of any goods caused by the unseaworthiness of the vessel or any lighter employed by the Carrier, unless such unseaworthiness is caused by the want of due diligence on the part of the Carrier to make the vessel seaworthy, or to have her properly manned, equipped and supplied, and to make any lighter employed by the Carrier fit for the reception, carriage and preservation of the goods, and to secure that the vessel is fit in all respects for the carriage of the goods in question. Any lighter employed by the Carrier shall be deemed to be a separate contract, whether printed or written on the face or back hereof, to deliver the goods to the vessel's tackle, anchorage or wharf in the customary manner to the consignee or his agents, if known to the carrier, or if unknown, to the holder of this Bill of Lading, or to the agents of the holder, if known to the carrier, or if unknown, to the shipper or his agents, if known to the carrier, or if unknown, to the agents of the vessel at the port of discharge, or as near thereto as she can safely get, always afloat, and there to be delivered

4. The rate of freight charged shall cover cost of transhipment [illegible] in accordance with the regulations and customs of the port of [illegible]

5. Full freight to destination, whether intended [illegible] of the goods by the latter, and shall be deemed irrevocably earned [illegible] up, or never begun, or goods never loaded. If paid at destination, [illegible] are hereby pledged to the carrier. Full freight and charges shall [illegible] the happening of any of the herein excepted contingencies, the Principal [illegible] routes and shall receive extra compensation for such service. [illegible] aforesaid merchandise or treasure during the voyage by vessel or vessels of [illegible] vessels belonged to strangers. In case freight is prepaid beyond the terminal [illegible] to the connecting carrier, and freight of every carrier of said goods by water other than the Principal [illegible] when such goods are placed on board such carrier's vessel and shall be paid [illegible]

6. If the shipowner shall have exercised due diligence to make said ship in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence of the pilot, master of crew in the navigation or management of the ship or from latent or other defects, or unseaworthiness of the ship, whether existing at the time of shipment or at the beginning of the voyage, but not discoverable by due diligence, the shippers, consignees or owners of the cargo shall not be exempted from liability for contribution in General Average, or for any salvage and special charges incurred, but with the shipowner shall contribute in General Average and shall be entitled to recover [illegible] resulted from such fault, negligence, latent or other defect or unseaworthiness [illegible]

7. General Average and/or salvage charges payable according to York Antwerp rules 1890 and Antwerp rule of 1903, and as to matters not therein provided for, according to the laws and usages of the Port of New York, and to be [illegible] of New York or at the Port of San Francisco as carrier may elect.

8. This Bill of Lading is issued under the terms of the Federal Bill of Lading Act (Pomerene Act) [illegible]

9. The shipment is subject to all the terms and provisions of, and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act Relating to Navigation of Vessels, etc."

10. The term "Principal Carrier" shall mean the carrying steamer named herein and/or the company owning and/or chartering and/or operating such steamer. The term "Principal Carrier's Agent" shall mean the agent referred to in Paragraph 1 above. The term "carrier" shall mean any private or common carrier, including the Principal Carrier, and/or vessel participating in this contract as carrier. The term "steamer" shall mean any vessel on which the shipment concerned in this contract is stowed or carried at any point between port of shipment and through billed destination; and the terms "shipper," "consignee" or "owners of the goods" shall mean the principal or principals to whom or to whose representative this bill of lading is issued. The term "shipowner" shall include the owner and/or charterer of the steamer.

11. Negligence shall not be presumed as against any carrier under this bill of lading, and no liability shall exist therefor without actual and affirmative proof thereof.

12. Each carrier shall be bound (subject to the limitations and exceptions contained in this contract, whether printed or written on the face or back hereof) to deliver said goods in the same order and condition as that in which it received them and the ultimate carrier to deliver them at its station, anchorage or wharf in the customary manner to the consignee or his assigns, if called for by him or them, as in this contract provided, he or they paying freight and charges thereon before delivery if required (unless prepaid).

13. The shipper, consignee and owner of the goods shall be liable for all loss, expense, damage, or delay to ship or cargo caused by inflammable, explosive, noxious or dangerous goods shipped without full disclosure in writing of the nature of said goods before delivering the same to carrier, whether shipper be principal or agent, and whether or not he had notice of their nature. Carrier may destroy such goods or throw them overboard at any time without liability therefor. Extra charges, if any, on such goods must be paid by the shipper, consignee or owner. Attention of shipper is called to Sec. 235 of the Penal Laws of the United States (Act of Congress, March 4, 9109), regulating the presentation to a common carrier of explosive or dangerous articles.

THE SHIPPER, CONSIGNEE OR OWNER OF THE GOODS

14. Shall take delivery of the goods at the station or wharf of the carrier at the ultimate point of delivery, in lots, or parts of lots, and if not taken away within twenty-four hours after arrival may, at the option of the delivering carrier, be sent to a warehouse or be permitted to lie where landed, all at the expense of the shipper, owner or consignee. If no address of a person at the ultimate point of delivery, immediately entitled to such delivery be disclosed by this bill of lading, the same must be furnished by the shipper, owner or consignee, in writing to the delivering carrier, before the time at which in ordinary course of transportation the goods should arrive at such point. A failure to do this or remove the goods within twenty-four hours after their arrival shall in case of any subsequent loss of or injury to the latter, be treated as conclusive proof of negligence on the part of the shipper, owner or consignee, which contributed to such loss or injury.

15. Shall, if required, surrender this bill of lading, duly endorsed, in exchange for delivery order.

16. Shall make demand for all claims for damage to cargo, misdelivery or delay in delivery thereof, shortage of portions of packages or shortage of whole packages of the herein described cargo, fully disclosing the nature and extent thereof in the presence of the Captain and/or Principal Carrier's Agent and/or delivering carrier at destination before the cargo is removed from the carrier's custody or final receipts signed. Unless written demand for payment of claims for said damage, misdelivery or delay in delivery, shortage of portions of packages or shortage of whole packages shall be made to the Captain and/or Agent of the Principal Carrier and/or delivering carrier at destination within ten days after delivery, all claims shall be taken to have been waived and no suit shall thereafter be maintained to recover same and no suit shall in any event be maintained against the Principal Carrier unless instituted within four months after the giving of written notice as provided for.

It is mutually agreed that when claims have been paid for shortage of portions of packages or shortage of whole packages, the claimant agrees to refund claim value of any subsequent delivery made by the Principal Carrier, or any other carrier.

THE CARRIER'S (PRIVILEGES)

17. Carrier is not and shall not be required to deliver said packages at the port of discharge or port of destination at any particular time; or to meet any particular market, or in time for any particular use.

18. Shall have the right to transfer the goods by lighter or other vessels, from steamer to steamer, from steamer to shore, or from shore to steamer, and shall not be liable for loss or damage caused by latent defects in the hull or equipment. Such transfers of the goods be performed subject to the liabilities, limitations and exceptions provided by statute, and to the conditions contained in this bill of lading, not inconsistent with such statutes or this section. If destination is a seaport, the ship may commence discharging immediately on arrival and discharge continuously, the Collector of the Port being hereby authorized to grant a general order for discharge immediately on arrival. Goods to be delivered at ship's tackles and/or deck, and all charges from thence, including quay expenses, weighing, and delivering to be borne by consignee or owners. If the goods be not taken by the consignee within such time as is provided by the regulations of the port of discharge, they may by the carrier be sent to store, permitted to lie where landed, or returned to the port of shipment, at the expense and risk of the owner, shipper, or consignee.

19. The Carrier shall have liberty to substitute any other vessel, or to tranship the whole or any part of said goods, before or after the commencement of the voyage, to any other vessel, and/or to drydock with the cargo, including said goods, on board, and/or to proceed by any route, although it be other than the advertised, scheduled or intended route, at any stage of the voyage, and to proceed toward or to, and enter and stay at, or return to, any ports or places whatsoever, although not regular or scheduled or advertised ports of call, or in a contrary direction to or outside of the usual or scheduled route, or beyond said port of destination, once or oftener, in any order, backwards or forwards, for the purpose of bunkering, or of securing, loading and/or discharging cargo, or for any other purpose that may seem advisable to the carrier or master. The vessel shall also have liberty to sail with or without pilots, to tow and assist vessels in all places and situations, and to take any measures deemed advisable for the purpose of saving life or property. All of the matters and operations mentioned in this paragraph are agreed to be within the intended voyage, and not a deviation.

20. Shall have a lien on said property for all fines imposed on it and for all expense to it resulting from shipper's failure to furnish proper Consular or Custom House papers in due time, or resulting from other errors or omissions of shippers, and all such fines and expenses shall be reimbursed to Carrier by consignee before said property shall be delivered to him.

21. Shall have a lien upon goods specified in this bill of lading for all arrearages of freight and charges due by the same owners or consignees on other goods.

THE CARRIER SHALL NOT BE LIABLE FOR:

22. Delay, nor in any other respect than as warehousemen, while the said property awaits conveyance from any point of transshipment, and in case the whole or any part of the property specified herein be prevented by any cause from leaving port in the first steamer of the line stated, leaving after the arrival of such property at the port, the carrier is at liberty to forward said property by succeeding steamer of said line, or, if deemed necessary, by any other steamer or route.

23. Gold, silver, precious stones or metals, jewelry, or treasure of any kind, bank notes, securities, silks, furs, laces, pictures, plate, china, glass, statuary or any article specified in Section 4281 of the Revised Statutes of the United States, unless the carrier be notified in writing at the time of shipment, and bills of lading are signed therefor, in which their nature and value are expressed and extra freight expressed and paid for the assumption of extraordinary risk.

24. Loss or damage or delay arising from any of the following causes, viz.: act of God; act of war; or of the public enemies; arrest, or restraint of princes, rulers or people, or seizure under legal process; perils, dangers or accidents of the sea, rivers, canals or other waters; explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, equipment or appurtenances; dangers or accidents incident to navigation by collision, stranding, jettison, wreck, or of any other kind whatsoever, even when occasioned by negligence, default or error in judgment of the pilot, master, mariners, or other servants of the shipowner or operator of the ship, not resulting, however, in any case, from want of due diligence by the owner or operator of the ship or any of them, or by the ship's husband or manager; by unseaworthiness of the ship, even existing at the time of shipment or sailing on the voyage, provided the owner or operator has exercised due diligence to make the vessel seaworthy; fire from any cause on land or on water, whether on board ship, on cars, lighters, in warehouse or on wharves or elsewhere; or water or steam or chemicals used for the purpose of extinguishing fire; barratry of the master or crew, pirates, robbers or thieves; pilferage, riots, or civil commotions, strikes or lockouts, or stoppage or restraint of labor from whatever cause, whether partial or general; restraints of governments, legal process, claims of ownership by third parties, quarantine, fumigation or disinfection, detention or accidental delay; ice, freshets, floods, rain, spray, frost, or any effects of climate, weather, mildew, fermentation, sifting, decay, putrefaction, decomposition, heat of hold, swelling, spontaneous combustion; want of proper cooperage or mending, chafing, insufficiency of package in strength or otherwise, rust, dampness, loss in weight, breakage, injury from hooks, sweat, blowing, bursting of casks or packages from weakness or natural causes drainage leakage, evaporation, rats, vermin, heat, smell, contact with or proximity to other goods, natural decay, change of character; or for loss or damage of any kind on goods packed in bales or whose bulk or nature requires them to be carried on deck or on open cars, or for the condition of packages or any deficiency in the contents thereof, if receipted by the consignee as in good order, or for injury or soiling of wrappers; or for any injury that may happen under any circumstances to, or for the death of any living creature that may be embarked, or sent for embarkation, on board the carriers.

25. Loss and damage exceeding the actual pecuniary loss or damage sustained by the shipper, consignee or owner of the goods, but in no case shall the carrier be held liable for any profits or increase of price or value over invoice cost, and not exceeding said invoice cost, or for any consequential or special damage, or for exceeding $100.00 on any single package, unless the value when exceeding this amount, is stated in writing at the time of delivery of shipment, and is expressed in the bill of lading, and extra freight paid thereon as per tariff. Any partial loss or damage for which the shipowner may be liable shall be adjusted pro rata on the amounts above indicated, respectively, but the basis of adjustment shall not in any event be higher than the invoice value. The shipowner shall be entitled to the benefit of any insurance on the goods and to any payments made by or on behalf of the insurers thereof, whether under the guise of advances, loans or otherwise.

26. Wrong carriage or delivery of goods marked with initials or imperfectly marked, unless name and address of consignee be given in writing at time of shipment; the carriers shall have the full benefit of such insurance, to the extent of their liability.

CONNECTING CARRIERS

28. In the event of the through-billed destination being beyond the terminals of the Principal Carrier, its responsibility shall terminate absolutely upon the delivery of the goods to connecting carrier, and the connecting carrier shall then become responsible to the owners of the goods for the proper custody, care and transportation to the destination to which the goods are through-billed. The receipt from a connecting carrier shall be evidence of the condition of the goods.

29. It is agreed that the property covered by this bill of lading after delivery to connecting carrier is subject to all conditions expressed in the regular forms of bills of lading in use by the connecting carrier at time of delivery, and to all local rules and regulations at port of destination not expressly provided for by the clauses herein.

30. It is further mutually agreed that all questions arising under this bill of lading are to be governed by the laws of the United States of America.

31. Every carrier is liable to the preceding carrier for all accrued charges and liens for General Average; and in the event of loss of the property after transfer from one carrier to another, the carrier having the property in charge when the loss occurs shall have a lien on the remaining property, if any, for all such advances.

32. The responsibilities and obligations of the carriers co-operating in the through-billing, shall be separate and distinct, and not joint general, or in common, each carrier being responsible to the owner of the goods for loss and damage occurring on his own section only of the through route and no carrier shall be called upon to make good the obligations and liabilities of another carrier.

(Continued on over page)

F. D. 2626—REVISED

The Pennsylvania Railroad Company

THIS SHIPPING ORDER must be legibly filled in, in Ink, in Indelible Pencil, or in Carbon, and retained by the Agent.

Shipper's No. 2461

Agent's No.

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Shipping Order,

at Indianapolis Ind. Oct. 17. 1927,

from My Own Company the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from

to *is in Cents per 100 Lbs.*

IF Time 1st	IF 1st Class	IF 2d Class	IF Rule 25	IF 3d Class	IF Rule 26	IF Rule 28	IF 4th Class	IF 5th Class	IF 6th Class	IF Class A	IF Class B	IF Class C	IF Class D	IF Class E	IF Special per	IF Special per

Consigned to Van Camp Products Co. % Munson Line (Mail Address—Not for purposes of Delivery.)

Destination Baltimore. State of Md. County of

Route P. R. R. to Baltimore Car Initial P R R Car No. 82271.

P	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	Rate and Authority	FREIGHT CHARGES	ADVANCES	PREPAID
2	Canned Vegetables	30,125	69½			2 —
—	Not Enabled Liquor					—
—	Serial No. Not	150				50
						60

B

THIS SHIPPING ORDER must be legibly filled in, in Ink, in Indelible Pencil, or in Carbon, and retained by the Agent.

Shipper's No. 7461

Agent's No. _____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Shipping Order,

at Indianapolis Ind. Oct. 17 1927,

from My Own Company the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from _____

to _____ *is in Cents per 100 Lbs*

IF Times 1st	IF 1st Class	IF 2d Class	IF Rule 25	IF 3d Class	IF Rule 26	IF Rule 28	IF 4th Class	IF 5th Class	IF 6th Class	IF Class A	IF Class B	IF Class C	IF Class D	IF Class E	IF Special per	IF Special per

Consigned to Van Pump Products Co. 6 Munson Line (Mail Address—Not for purposes of Delivery)

Destination Baltimore State of Md. County of _____

Route P.R. to Baltimore Car Initial PRR Car No. 89271

DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT Subject to Correction	Rate and Authority	FREIGHT CHARGES	ADVANCES	PREPAID
50 Crates Retarded	31,560		1		2 —
2 Pkgs Empty Pipe					4 —
Rec'd Payment					42 —
					44

The Agent must detach and retain this Shipping Order and issue in lieu thereof the Original Bill of Lading

620 THE PENNSYLVANIA RAILROAD 620

LOCAL FREIGHT WAYBILL

PC-N

X

PRR 82271

OCT 17 27 109220

BALTIMORE CANTON MYD

7380 INDPLS IND

MY ORN CO

VAN CAMP PRODUCTS CO
C/O LUNSON LINE

68

750 CS AN VEGTS
4 BOL EMPTY PAP IN CASES NOF

37275 492 18451

PC-R

Freight Bill No.

Freight Bill Date

X

CAR INITIAL AND NUMBER

PRR 82271

OCT 17 27 129220

TO STATION STATE

BALTIMORE CANTON MYD

7380 INDPLS IND

Route

MY OWN CO

CONSIGNEE ACCEPTS FINAL DESTINATION

VAN CAMP PRODUCTS CO
C/O HUNSON LINE

68

750 CS AN VEGTS
4 BOL EMPTY PAP IN CASES ADF

37275 492 18451

ADDITIONAL AGENTS STAMPS MAY BE PLACED ON BACK OF THIS

620 THE PENNSYLVANIA RAILROAD 620

GOVERNMENT EXHIBIT MY OWN NO. 3.

(162) MEMO. OF CLERK.

This exhibit is a carbon copy of Government Exhibit My Own No. 2, and is omitted to avoid duplication.

Form 946 RM-6-26

MUNSON STEAMSHIP LINE

901 KEYSER BLDG.
Baltimore, Md.

BALTIMORE TO ~~MIAMI~~ Jacksonville Fla.

MUNSON STEAMSHIP LINE

141 NORTHEAST THIRD AVENUE
Miami, Fla.

Government & My own 4

S. S. Munami Voy. No. 22 No. J-3

Shipped by My Own Company Account of

Consigned to Leslie Chitty Miami, Fla.

Street Address Jacksonville. Fla.

FREIGHT RATE DOES NOT INCLUDE MARINE INSURANCE

NOT INSURED unless endorsed in this space.

No. OF PKGS.	DESCRIPTION	WEIGHT	RATE	CHECK	FREIGHT AND CHARGES
750.	Cs. Canned Vegetables				Collect
4.	Bals. empty paper cases	37775.20			74.55
		inland Frt.			184.51
					$259.06
Car P.R.R-82271.					

STRAIGHT BILL OF LADING
NOT NEGOTIABLE

COPY

It is agreed that the Munson Steamship Line and/or the Steamer accept (s) no responsibility for any consequences of delayed discharge, due to congested facilities at port of discharge including deterioration of cargo, loss of market or other consequential damages.

RISK ON WHARF

33. That merchandise on bulkhead wharf or in warehouse awaiting shipment, transshipment or delivery be at owner's risk of loss or damage by fire, flood, or other casualty, and/or the giving away or falling or destruction in whole or part of the warehouse or the wharf of any structure thereon, not happening through the fault or negligence of carriers.

ICE BLOCKADES, QUARANTINES, STRIKES, ETC.

34. When the loading, transport, transshipment or delivery is prevented in consequence of ice, weather, epidemic, quarantine, sanitary measures, blockade, war, sedition, strikes, troubles, labor agitation, and all analogous circumstances whatever the carriers shall be entitled to load, discharge, transship, put into warehouse or quarantine depot, or into a lighter, hulk or craft, and to deliver all or any part of the goods, whether the terminus of the voyage or not, and all risks whatsoever, and all expenses of transshipment, forwarding or warehousing or Customs, and all extra expenses of whatsoever kind incurred in consequence of the above circumstances will be entirely for account of the shipper, consignee or party claiming the goods; even though some part of such extra expenses may be occasioned by the fault of the carriers; the Master and Owner being discharged from all responsibility on the goods being placed in charge of the Custom House or any Mercantile Agent or Consul.

35. Also, that if the ship is prevented by Quarantine from reaching her destination, or making due delivery of the goods, or is detained at quarantine, the goods may be forthwith without previous notice to shipper, owner or consignee, discharged into depots, lazarettes, hulks, crafts or lighters, at the risk and expense of shipper, owner and consignee, all and any of them, and such discharge shall be deemed a full and final delivery of the goods, all risk, responsibility and expenses of the carrier therefor, as carriers, bailee or otherwise, ending as soon as the goods are delivered from the ship's tackle, and all expenses thereby or thereafter incurred, and all increased cost of such delivery shall be paid by shipper, owner and consignee, all and any of them, the carrier retaining a lien on the goods therefor; but should the vessel or goods not be admitted, or such discharge be impracticable, or so in the master's opinion, the carrier may forthwith without previous notice proceed to the nearest safe port, or at ship's option to the nearest safe port to which the ship is bound, at the risk and expense of shipper, owner and consignee, all and any of them, and there land the goods as if at the original port of discharge, at the risk and expense of shipper, owner and consignee, all and any of them, he and they paying freight from the original port of discharge, and the carrier retaining a lien on the goods therefor and for all costs, charges and expenses incurred, and for all increased cost of delivery; and all risks and expenses incurred thereafter shall be on account of shipper, owner or consignee.

36. In case of the blockade or interdict of the port of delivery or transshipment, or if, without such blockade or interdict, the entering of the port should be considered by the Master unsafe by reason of disease, war or disturbances, he is to have the option of landing the goods at any other port which he may consider safe, at shipper's or consignee's risk and expense; and on the goods being placed in charge of the Custom House or any mercantile agent or consul, and a letter being put into the post addressed to the shipper or consignee if named, stating the landing and with whom deposited, the goods to be at shipper's or consignee's risk and expense, and the master and owner discharged from all responsibility.

37. The goods shall be liable for all expense of mending, cooperage, reconditioning and gathering of loose cargo and contents of packages, and for any payment, expense, duty, tax or impost of whatsoever nature levied upon the shipowner or the steamer by the authorities at any port of transshipment or discharge for or in connection with the goods herein described; and also for any payment, fine, expense, loss, damage or detention, howsoever sustained or incurred by the shipowner or steamer in consequence of illegal, incorrect or insufficient marking, numbering or addressing of packages, or description of their contents, or failure of the owner, shipper or consignee of the cargo to procure consular, Board of Health or other certificates to accompany the goods, or to comply with regulations of any kind whatsoever imposed with regard to the goods by the authorities at the ports of shipment or delivery. Cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for shall [illegible] of goods of this character in proportion to any apparent shortage, loss of weight or damage and shall be accepted as good and com-

Shipped by My Own Company Account of

Consigned to Leslie Chitty.

Street Address Jacksonville. Fla. Miami, Fla.

FREIGHT RATE DOES NOT INCLUDE MARINE INSURANCE

NOT INSURED unless endorsed in this space.

No. OF PKGS.	DESCRIPTION	WEIGHT	RATE	CHECK	FREIGHT AND CHARGES
750.	Cs. Canned Vegetables				Collect
4.	Bdls. empty paper cases				
Car	S.P.R.R-82271.	37275.20			74.55
		inland frt.			184.51
					$259.06

STRAIGHT BILL OF LADING
NOT NEGOTIABLE

COPY

* It is agreed that the Munson Steamship Line and/or the Steamer accept (s) no responsibility for any consequences of delayed discharge, due to congested facilities at port of discharge including deterioration of cargo, loss of market or other consequential damages.

RISK ON WHARF

33. That merchandise on bulkhead wharf or in warehouse awaiting shipment, transshipment or delivery be at owner's risk of loss or damage by fire, flood, or other casualty, and/or the giving away or falling or destruction in whole or part of the warehouse or the wharf of any structure thereon, not happening through the fault or negligence of carriers.

ICE BLOCKADES, QUARANTINES, STRIKES, ETC.

34. When the loading, transport, transshipment or delivery is prevented in consequence of ice, weather, epidemic, quarantine, sanitary measures, blockade, war, sedition, strikes, troubles, labor agitation, and all analogous circumstances whatever the carriers shall be entitled to load, discharge, transship, put into warehouse or quarantine depot, or into a lighter, hulk or craft, and to deliver all or any part of the goods, whether the terminus of the voyage or not, and all risks whatsoever, and all expenses of transshipment, forwarding or warehousing or Customs, and all extra expenses of whatsoever kind incurred in consequence of the above circumstances will be entirely for account of the shipper, consignee or party claiming the goods; even though some part of such extra expenses may be occasioned by the fault of the carriers; the Master and Owner being discharged from all responsibility on the goods being placed in charge of the Custom House or any Mercantile Agent or Consul.

35. Also, that if the ship is prevented by Quarantine from reaching her destination, or making due delivery of the goods, or is detained at quarantine, the goods may be forthwith without previous notice to shipper, owner or consignee, discharged into depots, lazarettes, hulks, crafts or lighters, at the risk and expense of shipper, owner and consignee, all and any of them, and such discharge shall be deemed a full and final delivery of the goods, all risk, responsibility and expenses of the carrier therefor, as carriers, bailee or otherwise, ending as soon as the goods are delivered from the ship's tackle, and all expenses thereby or thereafter incurred, and all increased cost of such delivery shall be paid by shipper, owner and consignee, all and any of them, the carrier retaining a lien on the goods therefor; but should the vessel or goods not be admitted, or such discharge be impracticable, or so in the master's opinion, the carrier may forthwith without previous notice proceed to the nearest safe port, or at ship's option to the nearest safe port to which the ship is bound, at the risk and expense of shipper, owner and consignee, all and any of them, and there land the goods as if at the original port of discharge, at the risk and expense of shipper, owner and consignee, all and any of them, and there land original port of discharge, and the carrier retaining a lien on the goods therefor and for all costs, charges and expenses incurred, and for all increased cost of delivery; and all risks and expenses incurred thereafter shall be on account of shipper, owner or consignee.

36. In case of the blockade or interdict of the port of delivery or transshipment, or if, without such blockade or interdict, the entering of the port should be considered by the Master unsafe by reason of disease, war or disturbances, he is to have the option of landing the goods at any other port which he may consider safe, at shipper's or consignee's risk and expense; and on the goods being placed in charge of the Custom House or any mercantile agent or consul, and a letter being put into the post addressed to the shipper or consignee if named, stating the landing and with whom deposited, the goods to be at shipper's or consignee's risk and expense, and the master and owner discharged from all responsibility.

37. The goods shall be liable for all expense of mending, cooperage, reconditioning and gathering of loose cargo and contents of packages, and for any payment, expense, duty, tax or impost of whatsoever nature levied upon the shipowner or the steamer by the authorities at any port of transshipment or discharge for or in connection with the goods herein described; and also for any payment, fine, expense, loss, damage or detention, howsoever sustained or incurred by the shipowner or steamer in consequence of illegal, incorrect or insufficient marking, numbering or addressing of packages, or description of their contents, or failure of the owner, shipper or consignee of the cargo to procure consular, Board of Health or other certificates to accompany the goods, or to comply with regulations of any kind whatsoever imposed with respect to the goods by the authorities at the ports of shipment or delivery. Cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for shall be allocated to the various consignees of goods of like character in proportion to any apparent shortage, loss of weight or damage and shall be accepted as good and complete delivery.

38. Green fruits, vegetables, meats and any other kind of perishable goods will be carried in ordinary cargo compartments or holds, unless it has been expressly agreed, for a special rate of freight, that such goods will be carried in a refrigerated, chilled or specially ventilated compartment. Where such goods of a perishable nature are carried in ordinary compartments and a special rate of freight is not paid, the shipper represents that such goods do not need, and the shipowner will not be required to give them, any other treatment than that given to ordinary non-perishable cargo. The refrigerating, chilling or ventilating machinery shall be considered part of the machinery and appurtenances of the vessel, and all exceptions mentioned elsewhere in this bill of lading shall be applicable thereto and to the cargo carried in the refrigerated compartments.

Baltimore (Date) November 4.th. 1927

W. P. Corra.

FOR MUNSON STEAMSHIP LINE, Agents

THIS BILL OF LADING MUST BE SURRENDERED BEFORE DELIVERY

Received $.....

to apply in prepayment of the charge on the property described hereon.

.....

Agent or Cashier

MUNSON STEAMSHIP LINE
67 WALL ST., NEW YORK
W. P. CORIA,
LOCAL MANAGER
E. L. CUNNINGHAM,
ASST. LOCAL MANAGER
KEYSER BUILDING
CALVERT & REDWOOD STS.

D-
4-10-1

Government & Myers 5

BALTIMORE, MD. Nov. 10, 192 7

C
O
P
Y

Mr. L. C. Frederick, Agent,
Pennsylvania R. R.,
Canton,
Baltimore, Md.

Dear Sir:-

S.S: MUKAI V-22 S.B.

We are enclosing herewith our check #13656 in amount $813.14 in payment of the following bills, which we kindly ask that you receipt and return by early mail:

Freight Bill No.	Shipper	B/L	Amount.
64648	Graham Winkley & Co.	M 19	3.03
65669	"	M 17	6.28
74770	American Steel Co. of Cuba	M 5	1.24
75208	"	M 5	1.94
74401	F. W. Woolworth Co.	M 27	6.44 -
73690	My Own Co.	J 3	184.51 - (12)
73691	A. [illegible] Roeser & Co.	M 6	67.16 -
73682	Lancaster Iron Works	M 7	46.84 - ✓
74992	"	M 7	84.52 - ✓
75564	"	M 7	43.53 - ✓
75565	W. E. Robinson & Co.	M 8	85.96 -
75623	Quaker City Iron Works	M 13	72.30 -
76149	[illegible]an Camp Prod. Co.	M 18	166.95 -
76348	Duffy Mott Co.	M 19	140.44 -

Yours very truly,
MUNSON STEAMSHIP LINE

E. L. Cunningham (signed)

Asst. Local Manager.

Government & Negroes

MY OWN COMPANY

Indianapolis, Ind.

FRUIT COURT.

Oct. 18,
1927.

Mr. J. P. Wurin, Local M.r.,
Lunson Steamship Line,
Keyser Bldg.,
Baltimore, Md.

Dear Sir:-

Attached hereto is memorandum copy of inland bill of lading covering P.R.R. car #2271 containing 700 cases of Canned Vegetables and 4 bundles of empty paper cases, O.B. 1st, forwarded from our Indianapolis Factory on Oct. 17th consigned in your care.

This car is to be considered direct to Lewis-Whitty Cons. solidated at Jacksonville, Fla. Will you please issue bill of lading accordingly, sending the original direct to Lewis-Whitty at Jacksonville, Fla., and forward to us at least two non-negotiable copies.

The inland and ocean charges are to be billed collect thru to destination. Also forward uninsured, as this will be handled by the consignee.

The movement is in connection with the Pennsylvania Lines thru to Baltimore, and they have been requested to trace and rush as much as possible. We will thank you to handle from your end, and arrange loading to the first available steamer after delivery by the Pennsylvania Line.

Yours very truly,

JQ-EI

MY OWN COMPANY

Q. I #1

SS.	V.	SAIL.	ARR. JACKSONVILLE	B/L	SHIPPED BY	TO	R.R.
[illegible]LISTO	22	12/15/27	12/19/27	12/23	1/[illegible]	M-8 Charles C. Fischer	Charles C. Fischer	Blt. to Miami

The Western Maryland B/L shows that this shipment was consigned to Charles C. Fischer, c/o Munson Steamship Line at Baltimore, while in the body of the B/L it shows that it was to be forwarded to Charles C. Fischer at Miami, Fla. The instructions of the shipper, in a letter, directed the Munson Line to send the consignment to Charles C. Fischer at Miami. Munson B/L was issued for the ocean transportation and railroad B/L surrendered at Baltimore.

Q. I #2 R

SS.	V.	SAIL.	ARR. JACKSONVILLE	B/L	SHIPPED BY	TO	R.R.
[illegible]LISTO	22	12/15/27	12/19/27	12/23	12/[illegible]	M-7 Studebaker Corp. M-8 "	Studebaker Corp. Atty. Wellborn C. Phillips Inc.	Blt. to Miami

The Wabash Railway B/L shows that this shipment was consigned to order of Studebaker Corp. of America; destination Baltimore, notify Munson SS. Line at Baltimore, while in the body of the B/L it shows that it was to be forwarded to Miami. The instructions from the shipper by letter directed the Munson Line to send it to Miami. Munson B/L was issued for the ocean transportation and railroad B/L surrendered at Baltimore.

Q. I #4

SS.	V.	SAIL.	ARR. JACKSONVILLE	B/L	SHIPPED BY	TO	R.R.
[illegible]AI	22	11/4/27	11/8/27	11/11	11/14	J-3 My Own Co.	Lewis Chitty	Blt. to Jack.

Attention is invited to the fact that the My Own Company shipment was contained on the Penn. R.R. B/L, to Van Camp Products Co. c/O Munson [illegible] Line, destination Baltimore, Md. My Own Company instructed the Munson Line by letter, to forward the goods to Lewis Chitty at Miami, which was done, showing the instructions of the shipper govern. Munson B/L was issued for the ocean transportation and railroad B/L surrendered at Baltimore.

Q. I #5

SS.	V.	SAIL.	ARR. JACKSONVILLE	B/L	SHIPPED BY	TO	R.R.
[illegible]LISTO	13	8/25/27	[illegible]/28/27	8/31	9/2	M-5 Lancaster Iron Wks.	Clark Dredging Co.	Blt. to Miami

The Penn. R.R. Co. B/L shows that this consignment was sent to the Munson SS. Line at Baltimore, as consignee, while in the body of the B/L it was show that the consignment was for the Clark Dredging Company of Miami, Fla. The letter of instructions from the shipper directed the Munson Line to send it to the Clark Dredging Company of Miami and the Munson B/L was issued accordingly. Munson B/L was issued for the ocean transportation and railroad B/L surrendered at Baltimore.

Attention is invited to the fact that in making payments to the railroads of inland freight on the shipments involved in the criminal and mandamus cases, payments were made at the same time on all shipments received, regardless of destination of the cargo. See the letter transmitting checks, which shows destination of all shipments. The arrival dates of the several points are given above.

ION	RCD. BY ... AT	RCD. BY ... SH.	T. BILL OF ...	...T. ... A.T.	PRT. COLLECTED I LA D. OCK A		PRT. COLLECTED	DELAY DATE TO TO SHIPPE
lt. to Miami	York, Pa. P.R. R.	12/12/27	12/14/27	12/21/27	$43.76	$43.76	84.65	12/27/27	12/29/27
ne Steamship s C. Fischer at e consignment ed B/L									
lt. to Miami	Detroit, R&O R.R.	12/6/27	12/8/27	12/21/27	133.28 11.00	133.28 11.00	181.74 145.48	12/27/27	12/27/28
American; destination it was to be sold it to timore.									
lt. to Jack.	Indianapolis PRR	10/25/27	11/5/27	11/10/27	184.81	184.81	74.55	11/10/27	11/10/27
R. B/L, to Van ti- Vessel Ne- tions of the ed at Baltimore.									
lt. to Miami	Lancaster PRR.	8/23/27		8/31/27	68.15	68.15	145.70	8/31/27	8/31/27
s consignee, ty of Miami, ark Dredging on transporta-									
ght of the ion on all s checks, ver above.									

ASSIGNMENT OF ERRORS

(167) Filed 22nd April, 1929.

(Style of Court and Title omitted.)

Now comes the United States of America and presents the following Assignment of Errors in connection with its appeal from the judgment in this case to the United States Circuit Court of Appeals for the Fourth Circuit:

First: That the Court erred in not permitting Petitioner to ask the witness, John M. Wight, the question "Where do you get your freight money for your end of the shipment?" as shown by the Petitioner's First Bill of Exceptions.

Second: That the Court erred in sustaining the objection of the Defendant to the offering in evidence by the Petitioner of what is known as an indices of the various tariffs the Merchants and Miners Transportation Company files with the Interstate Commerce Commission, as shown by the Petitioner's Second Bill of Exceptions.

Third: That the Court erred in allowing the Respondent to offer in evidence certain letters described as "Defendant's Exhibit No. 1" and as set forth in the Petitioner's Third Bill of Exceptions.

(168) Fourth: That the Court erred in permitting Respondent to ask the witness, Corrier, question "Has, from the custom of the business, this notation on here of Charles C. Fischer, any relation to the place of ultimate destination under this bill of lading?" as shown in the Petitioner's Fourth Bill of Exceptions.

Fifth: That the Court erred in refusing to allow the witness, Couse, to be asked by the Petitioner on cross examination, the following question: "Thus far there is no difference. Do you mean, as Mr. Chesnut has suggested, that you are paid less or more freight when you

forward by the Merchants and Miners than when you forward by the Munson Line?" as shown in the Petitioner's Fifth Bill of Exceptions.

Sixth: That the Court erred in refusing to permit the witness, Couse, to be asked by the Petitioner upon cross examination, the following question: "I will ask you if there is any difference in the part of the freight that the Baltimore and Ohio receives upon a shipment from Cumberland to Miami when it is forwarded from Baltimore by the Munson Line?" as shown in the Petitioner's Sixth Bill of Exceptions.

Seventh: That the Court erred in refusing to permit the witness, Couse, to be asked on cross-examination by the Petitioner the following question: "Well, in a moral or metaphysical sense then?" as shown in the Petitioner's Seventh Bill of Exceptions.

Eighth: That the Court erred in refusing to permit this Petitioner to ask the witness, Couse, upon cross-examination, the following question: "Well, you say in (169) one breath that a shipper can ship, and you say there is a plan by which he can ship in that way and I ask you once more then, doesn't all this mean that so far as the shipper is concerned there is an arrangement by which he can ship automobiles from Detroit to Miami without his intervention at Baltimore?" as shown in the Petitioner's Eighth Bill of Exceptions.

Ninth: That the Court erred in permitting the defendant to ask the witness, Morse, the following question upon direct examination: "Are you a member and do you sit in at such conferences, or participate in them?" as shown in the Petitioner's Ninth Bill of Exceptions.

Tenth: That the Court erred in refusing to grant Petitioner's First Prayer, as shown in its Tenth Bill of Exceptions.

Eleventh: That the Court erred in refusing to grant Petitioner's Second Prayer, as shown in its Eleventh Bill of Exceptions.

Twelfth: That the Court erred in refusing to grant Petitioner's Third Prayer, as shown in its Twelfth Bill of Exceptions.

Thirteenth: That the Court erred in refusing to grant Petitioner's Fourth Prayer, as shown in its Thirteenth Bill of Exceptions.

(170) Fourteenth: That the Court erred in refusing to grant Petitioner's Fifth Prayer, as shown in its Fourteenth Bill of Exceptions.

Fifteenth: That the Court erred in refusing to grant Petitioner's Sixth Prayer, as shown in its Fifteenth Bill of Exceptions.

Sixteenth: That the Court erred in granting the Respondent's First Prayer, as shown in the Petitioner's Sixteenth Bill of Exceptions.

A. W. W. WOODCOCK,
Attorney for the Petitioner.

STIPULATION OF COUNSEL AS TO MAKING UP TRANSCRIPT OF RECORD ON APPEAL

(171) Filed 22nd May 1929.

(Style of Court and Title omitted.)

It is hereby stipulated by all of the counsel for all of the parties that Rule 23 of the Circuit Court of Appeals for the Fourth Circuit shall apply and govern the making up and printing of the record in this case.

And it is further stipulated and agreed by and between counsel for the respective parties that the following portions of the record in the above entitled case shall be incorporated into the transcript of record on appeal:

1. Petition for Writ of Mandamus and Order of Court thereon.

2. Answer.

3. Replication.

4. Opinion and charge of the Court.

5. Verdict and Judgment.

6. Petition of Plaintiff and Order of Court extending time for filing Bills of Exceptions.

7. Assignment of Errors.

8. Bills of Exceptions.

9. This Stipulation.

(172) 10. Memorandum of the Clerk.

11. Order to transmit Record.

12. Clerk's Certificate.

A. W. W. WOODCOCK,
U. S. Attorney for the District of Maryland,
Attorney for Appellant.

W. CALVIN CHESNUT,
Attorney for Appellee.

(173) **MEMORANDUM OF CLERK**

1. Petition for Appeal, filed 22nd April, 1929.

2. Appeal granted 22nd April, 1929.

3. Citation. Dated 22nd May, 1929. (Acknowledgement of Service dated 23rd day of May, 1929.)

ORDER TO TRANSMIT RECORD

And, thereupon, it is ordered by the Court here, that a transcript of the record and proceedings of the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Fourth Circuit, and the same is transmitted accordingly.

Teste:

ARTHUR L. SPRAMER,
Clerk.

(174) **CLERK'S CERTIFICATE**

UNITED STATES OF AMERICA,
District of Maryland, to-wit:

I, Arthur L. Spamer, Clerk of the District Court of the United States for the District of Maryland, do hereby certify that the foregoing is a true transcript of the record and proceedings of the said District Court, together with all things thereunto relating, in the therein entitled cause, made up in accordance with stipulation of counsel for the respective parties filed in said cause.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of said District Court this 28th day of June, 1929.

ARTHUR L. SPRAMER,
(Seal) Clerk.

193 In United States Circuit Court of Appeals, Fourth Circuit

No. 2908

UNITED STATES OF AMERICA, APPELLANT

VERSUS

MUNSON STEAMSHIP LINE, APPELLEE

Appeal from the District Court of the United States for the District of Maryland, at Baltimore. At law

Docket entries

July 27, 1929, the transcript of record is filed and the cause docketed.

Same day, the original petition for appeal, order allowing appeal, and citation are certified up under sec. 7 of rule 14.

Same day, order extending time to file record is filed.

Same day, the appearance of A. W. W. Woodcock, U. S. attorney, and Elmer B. Collins, special assistant to the Attorney General, is entered for the appellant.

August 1, 1929, the appearance of W. Calvin Chesnut is entered for the appellee.

August 3, 1929, the appearance of Frank Lyon is entered for the appellee.

August 5, 1929, the appearance of Irving L. Evans is entered for the appellee.

194 September 6, 1929, twenty-five copies of the printed record are filed.

Argument of Cause

October 22, 1929 (October term, 1929), cause came on to be heard before Parker and Northcott, Circuit Judges, and McDowell, District Judge, and is argued by counsel and submitted.

195 In United States Circuit Court of Appeals,
Fourth Circuit

No. 2908

UNITED STATES OF AMERICA, APPELLANT

VERSUS

MUNSON STEAMSHIP LINE, APPELLEE

Appeal from the District Court of the United States for the District of Maryland, at Baltimore

(Argued October 22, 1929. Decided January 14, 1930)

Before PARKER and NORTHCOTT, Circuit Judges, and McDOWELL, District Judge

Opinion

Filed January 14, 1930

A. W. W. Woodcock, U. S. attorney, and Elmer B. Collins, special assistant to the Attorney General (John Lord O'Brian, assistant to the Attorney General, and Z. W. Scott, attorney, Interstate Commerce Commission, on brief), for appellant, and W. Calvin Chesnut, Frank Lyon, and Irving L. Evans for appellee.

196 This was a proceeding by the United States under section 20, paragraph 9, of the interstate commerce act (49 U. S. C. A. 20 (9)). It was instituted by the Attorney General, at the request of the Interstate Commerce Commission, for the purpose of obtaining a writ of mandamus requiring the Munson Line to file with the commission under section 6 of the interstate commerce act (49 U. S. C. A. 6) schedules of its rates and charges covering the transportation of goods by water from Baltimore, Md., to ports in the State of Florida. Defendant denied that in such transportation it was acting with any rail carrier under a common control, management, or arrangement for a continuous carriage or shipment; and, for this reason, denied that there was obligation on its part to file schedules under the act. The case was heard before Judge Coleman and a jury, and at the conclusion of the testimony a verdict was directed for defendant and the Government appealed.

The facts are practically undisputed. Defendant operates lines of steamers, in the coastwise and intercoastal trade, between various ports of the United States, one line being from Baltimore to Jacksonville and Miami, Florida. It accepts from rail carriers at Baltimore freight which has been transported from inland points, and from there transports it to these Florida ports. This freight is not covered by through bills of lading or by through or joint rates, and

there is no agreement between defendant and the rail carriers for the division of the aggregate of the separate rail and water rates, or any customary or conventional division thereof. The freight is shipped to Baltimore in care of, or "order notify," the defendant, with the name of the ultimate consignee in Florida noted on the waybill and bill of lading, but not, however, either as shipper or consignee. Defendant receives the freight at Baltimore as agent of shipper and pays the rail charges. It then issues a bill of
197 lading to the shipper covering the water transportation. Upon delivery in Florida, it collects from the consignee its own charges as well as the rail charges which it has advanced; but the latter are collected, not as agent for or under any agreement with the rail carrier, but because they have been advanced as an incident to the contract between defendant and the shipper. The details with regard to defendant's handling of this traffic were well stated by the learned judge below as follows:

"The rail carrier to Baltimore issues its bill of lading to the shipper, showing the destination of the shipment to be Baltimore. In due course of transportation the merchandise is delivered to the Munson Line. The bill of lading is surrendered to the rail carrier. The freight of the rail carrier is paid by the Munson Line, which then issues its bill of lading to the shipper for carriage of the goods by water from Baltimore to the point of destination. The Munson Line is instructed by separate written advice from the shipper as to what disposition to make of the goods, and the Munson Line issues its own separate bill of lading accordingly. The freight rate for the transportation of the goods by rail to Baltimore is fixed and determined by the tariffs and the separate bill of lading issued by the rail carrier, and is paid by the Munson Line at the request of the shipper to the rail carrier, upon presentation of bills for the freight by the rail carrier.

"There is no evidence in the present case of any agreement of any kind, verbal or written, existing between the shipper or the Munson Line, or both, with the rail carrier, except as is embraced in the rail carrier's bill of lading, to which, as I just explained, the respondent is not a party, and except, as is also embraced in the related documents, such as the waybill and so forth. That is to say, there is no agreement in evidence in this case between the rail and water carrier with regard to either a through bill of lading or any agreement for division between them of a through rate. Neither has filed with the commission any tariff or schedule of
198 charges for a through rate, partly by rail and partly by water. In all cases the destination under the rail billing is Baltimore. The consignee is either the shipper at Baltimore or the Munson Line, as agents for the shipper, or the shipper in care of the Munson Line. The Munson Line looks to the shipper for instructions as to the further carriage of the merchandise, and in every case the Munson Line receives a separate written order from the shipper as to the further carriage. The Munson Line then makes out and sends

to the shipper its own bill of lading for the ocean carriage, in which its freight rate is specified. If the railroad freight rate has not been paid by the shipper, it is advanced and paid—that is, if it is not a prepaid shipment—it is advanced and paid for his account by the Munson Line to the rail carrier on presentation of bill, irrespective of its collection by the Munson Line from the consignee at the point of destination at the end of the water carriage.

"In so far as the rail carrier is concerned, since it does not issue a through bill of lading, its contract of carriage terminates when the goods are delivered in Baltimore. Upon their arrival there the railroad sends an arrival notice to the Munson Line, as in the case of any other shipment consigned to Baltimore, and after the free time allowed by the tariff regulations the railroad ceases to be liable as a carrier, and thereafter becomes liable merely as a bailee. If the billing is an order bill of lading, as distinguished from a straight bill of lading, it must be surrendered to the rail carrier before delivery of the goods is made.

"In support of its claim that the respondent is a party to an arrangement common to it and the rail carrier and that, therefore, the claim of the separate billing is a mere subterfuge to escape the jurisdiction of the commission, the Government stresses the fact that there is noted in the descriptive portion of the billings, and on the annexed or accompanying papers, the ultimate destination of the shipment, but the court finds that there is no evidence tending to show that this does more than serve as a convenience in the subsequent movement of the freight. That is to say, there is no
199 evidence of any greater joint arrangement between the rail and water carriers than has just been described.

"In accepting shipment from the rail carrier and in advancing the freight charges at Baltimore the steamship company acts as agent for the shipper. * * * The rail carrier's contract ends with the delivery on the pier, unless there be some terminal or lighterage service. The transfer of the goods from this pier to the vessel is performed by the stevedores acting for the water carrier, and the charges for the same are absorbed by the water carrier. It will be admitted, of course, that this entire method of handling shipments tends toward more prompt and efficient transportation and delivery and is of mutual advantage both to the shipper and to the carrier, but the court finds that this in itself is not sufficient to offset the legal independence which the court finds exists between the contract of carriage of the one carrier and that of the other.

"The Government also stresses the fact that under the plan adopted of settling the rail carrier's freight bill the respondent, and therefore the shipper, is accorded a greater credit period than the ordinary consignee at Baltimore obtains under existing carrier's rules. But this also the court finds is merely incidental to an arrangement, and is not indicative of a common arrangement, such as the act contemplates. Whether more credit is actually now being extended by the railroad to the Munson Line than the law allows is a question

which may require investigation, in a proper proceeding, but it does not prove, the court thinks, or tend to prove, in the absence of more evidence on the point, such common arrangement between the two carriers covering the situation here complained of as that term must be understood to be used in the law.

PARKER, Circuit Judge (after stating the facts as above):

Every common carrier subject to the provisions of the interstate commerce act is required under penalty to file with the
200 Interstate Commerce Commission, and print and keep open for public inspection schedules of its rates, fares, and charges, and conform thereto. 49 U. S. C. A. 6. The question in the case is whether the defendant, being admittedly a carrier by water, is subject to the provisions of the act. It is well settled, of course, that water transportation unconnected with transportation by rail is not subject to its provisions. Wilmington Transportation Co. v. Cal. R. R. Com., 236 U. S. 151, 153; Ex Parte Koehler, 30 Fed. 867, 869; in the Matter of Jurisdiction over Water Carriers, 15 I. C. C. 205, 207; Corona Coal Co. v. Secretary of War, 69 I. C. C. 389. Water carriers are subject, not to the Interstate Commerce Commission, but to the U. S. Shipping Board, and are required to file schedules of maximum rates with that board, which is given supervisory power over their rates and practices. 39 Stat. 735, 46 U. S. C. A. 817. It is true that, under the Panama Canal act of Aug. 24, 1912, 37 Stat. 560, 568; 49 U. S. C. A. 6 (13), the commission is given jurisdiction to establish through routes and maximum joint rates over rail and water lines. U. S. v. N. Y. Cent. R. R., 272 U. S. 457; Chicago, R. I. & P. Ry. v. U. S. 274 U. S. 29. But it has not here attempted to exercise the power conferred by that act, and we may accordingly dismiss it from consideration.

All of the foregoing is conceded by the Government, but it contends that defendant's transportation from Baltimore to the Florida ports is part of a continuous carriage or shipment begun by rail, and that the rail and water transportation are thus used under a common arrangement within the meaning of section 1 (a) of the interstate commerce act as amended, which provides that the act shall apply to common carriers engaged in "the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control,
management, or arrangement for a continuous carriage or ship-
201 ment." 49 U. S. C. A. 1 (a). It is admitted that defendant is not under a common control or management with any railroad line, and so the question is further narrowed to whether it handles the traffic in question under a "common arrangement for a continuous carriage or shipment" within the meaning of the act. We agree with the court below that it does not.

The meaning of "common arrangement" as thus used is to be sought, not in abstract definitions, but in the purpose for which it was incorporated in the interstate commerce act. The purpose of Congress is enacting that statute was not to regulate carriers by

wafer, but carriers by rail; and water carriers were made subject to its provisions only in so far as was necessary to prevent evasion of the act on the part of rail carriers. As said by Chairman Knapp of the Interstate Commerce Commission (later a judge of this court) in the case entitled, In the Matter of Jurisdiction over Water Carriers, supra, 15 I. C. C., at 207:

"Looking to the history of the enactment, and without attempting to quote the pertinent portions of the congressional debates and committee reports preceding the enactment of the law in 1887, there can be no doubt that the main purpose of the act was to regulate transportation by railroad; that the regulation of water lines was merely incidental and collateral, and was included in order that the regulation of railroads might be effective and not virtually nullified by arrangements between railroads and water lines."

It is clear that, but for the control given over transportation partly by rail and partly by water, such provisions of the act as the long and short haul clause and those prohibiting preferences, rebates, and special rates, could have been evaded without difficulty by manipulation of the water rates in cases where both rail and water carriage were used and both carriers were under a common control or management. This danger was to be anticipated also, where,
202 although common control and management were absent, there was an arrangement between the carriers for transportation as a single joint enterprise, as in case of through billing or conventional division of rates; and it was evidently to cover cases of this sort that provision was made for jurisdiction in cases of "common arrangement for a continuous carriage or shipment," as well as in cases of common control or management. In other words, Congress was guarding against the possibility of evasion arising from the fact that water carriage was a part of the transportation furnished; and it was intended to subject the water carrier to the jurisdiction of the commission where it was within the power of the rail carrier to evade the act by his control over water rates whether by control or management of the water carrier or other arrangement.

It follows from this, we think, that the "common arrangement" contemplated by the act must be one between the carriers themselves, giving to one or the other, or both, such an interest in or control over the entire undertaking as to constitute the continuous transportation in some sense a common enterprise; for under no other sort of arrangement would there exist the possibility of manipulating water rates so as to evade the act designed for the regulation of rail carriers. Such an arrangement as one to deliver freight at the end of a rail line to a water carrier to whom it is consigned and who transports it under a separate contract with the shipper is clearly not a common arrangement within the spirit of the provision which we are considering; for, while such an arrangement might result in continuous transportation, it would furnish to the rail carrier no opportunity to evade the act against which the provision was directed.

We must bear in mind, also, in interpreting the provision, that "common arrangement" is a general term used in connection
203 with the more specific terms, "common control" and "common management"; and, under the ejusdem generis rule, it must be interpreted as an arrangement analogous to common control or management, i. e., an arrangement attended with similar advantages and opportunities to the rail carrier and similar dangers to the public, having in view the reason and purpose of the provision. An arrangement which is nothing more than a provision for the delivery of freight to the agent of the shipper at the end of rail transportation is manifestly not such an arrangement.

In one of the earliest cases arising under this provision, Ex parte Koehler, supra, 30 Fed. 867 at 869, Judge Deady said:

"But the interstate commerce act does not include or apply to all the instrumentalities or agencies used or engaged in interstate commerce. It does not include any water-craft unless it is used in connection with a railway, 'under a common control, management, or arrangement, for a continuous carriage or shipment.' * * * The mere fact that a railway wholly within a state and a vessel running between said State and another meet at a point within the railway state, and thus form a continuous line of transportation between the two States by the one taking up the goods delivered by the other at its terminus and carrying them thence to their destination does not bring the carriers who so use the railway and steamer within the act. So long as the railway and steamer are each operated under a separate and distinct control making its own rates and only liable for the carriage and safe delivery of the goods at the end of its own route, the act does not apply to the transaction. To make these carriers subject to the act, the railway and vessel must, as therein provided, be operated or used under a 'common control'—a control to which each is alike subject and by which rates are prescribed and bills of lading given for the carriage of goods over both routes as one.

"On this apparently plain exposition of the act, the railway
204 of the Oregon and California Company and the steamers of the Oregon Railway & Navigation Company are not 'used under a common control, management, or arrangement' in this respect, and therefore are not subject to the act, although engaged in interstate commerce. Each carrier makes its own rate and undertakes for the carriage and delivery of goods not otherwise than over its own route. The fact that both are interested in maintaining the traffic between Oregon and California over this route and by this means, so as to secure it against the competition of the Oregon Pacific, is not material. Each is at liberty, as far as the other is concerned, to raise or further reduce its rates to-morrow if the exigencies of the traffic permit or require it. The present rate is not the result of any 'arrangement' between the two carriers 'for a continuous carriage or shipment' from Oregon to San Francisco, and vice versa, but only an independent, though concurrent reduction of rates by each

over its own route, for the purpose of retaining the traffic thereon against the competition of a rival route."

In Mutual Transit Co. v. U. S. (C. C. A. 2nd), 178 Fed. 664, a prosecution for violation of the statute against rebating, it appeared that defendant there, as in this case, was a water carrier and had been transporting freight delivered to it by a railroad company. It had refunded to the shipper a part of the rate charged, and the only question was whether it was a carrier subject to the act. This turned on whether there was a common arrangement between the defendant and the rail carrier. In holding that there was not the court speaking through Judge Noyes, said:

"The phrase 'common arrangement,' in view of its context, evidently means an agreement or understanding between connecting carriers with respect to the transportation of merchandise and the charges and division of the charges to be made therefor. A mere agreement by an independent water carrier to accept freight from a connecting railroad, and to transport it for its own particular rate might be an 'arrangement' for continuous carriage, but would not be a 'common arrangement.'"

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In C., N. O. & T. P. Ry. v. Int. Com. Com., 162 U. S. 184, 192, and 193 (the Social Circle case), the court said:

"But when the Georgia Railroad Company enters into the carriage of foreign freight, by agreeing to receive the goods by virtue of foreign through bills of lading, and to participate in through rates and charges, it thereby becomes part of a continuous line, not made by a consolidation with the foreign companies, but made by an arrangement for the continuous carriage or shipment from one State to another, and thus becomes amenable to the Federal act, in respect to such interstate commerce. * * * All we wish to be understood to hold is that when goods shipped under a through bill of lading from a point in one State to a point in another are received in transit by a State common carrier, under a conventional division of the charges, such carrier must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the act to regulate commerce. When we speak of a through bill of lading, we are referring to the usual method in use by connecting companies and must not be understood to imply that a common control, management, or arrangement might not be otherwise manifested."

It will be noted that, while the court does not hold that common control, management, or arrangement may not be manifested otherwise than by through billing, it clearly implies that for any arrangement to come within the meaning of the act it must result in the creation of a "continuous line," i. e., a line over which goods are transported by virtue of agreement, express or implied, between the carriers themselves. And we think that no case can be found holding that a common arrangement existed within the meaning of the act where there was not such "continuous line," created either by through billing or conventional division of rates. See Interstate Com. Com. v. Goodrich Transit Co., 224 U. S.

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194; L. & N. R. Co. v. Behlmer, 175 U. S. 648; Standard Oil Co. v. U. S. (C. C. A. 2nd), 179 Fed. 614; U. S. v. Wood, 145 Fed. 405, 411; U. S. v. Seaboard Ry. Co., 82 Fed. 563; Long v. Old Dominion S. S. Co., 154 N. Y. S. 227.

But, under no possible definition of "common arrangement," could what is shown here bring the defendant within the meaning of the term. There was no "continuous line" for traffic created by virtue of the receipt of goods on through bills of lading or conventional division of charges, as in the Social Circle case. There was, to apply the test laid down by Judge Noyes in the Mutual Transit Co. case, no understanding between the carriers with respect to the "charges and division of charges" to be made for transportation. There was no through bill of lading, no through or joint rate, no agreement for the division of the aggregate of the separate rail and water rates, and no agreement between the carriers, either express or implied, that defendant should carry the freight delivered to it to any destination. In short, there was no common arrangement of any sort between the carriers giving them such an interest in or control over the shipment from point of origin to the ultimate destination in Florida, as to constitute the transportation in any sense a common enterprise. There was an arrangement by which freight shipped to Baltimore, but destined by the shipper for further shipment to Florida ports under a separate contract, should be delivered to defendant as agent of the shipper; but this is a very different thing from a common arrangement between the carriers themselves for continuous transportation.

It is argued that a common arrangement for continuous transportation is shown by the fact that the rail carrier allows the name and address of the ultimate consignee in Florida to be noted
207 on its way bills and bills of lading and that its freight charges are paid by defendant. But it is clear that the notation in question is made merely for the convenience of the carriers in handling the freight and that no contract or obligation with respect to further carriage arises between them because of same. On the contrary, the freight is handled by each carrier under a separate contract with the shipper, and neither has any part in the charges or obligations of the other.

The same is true as to the payment of rail charges by defendant. These charges constitute liens on the freight involved, and for defendant to pay them when taking possession of the freight for handling under its contract can no more be said to be a common arrangement between the carriers for continuous transportation than the payment of such charges by a warehouseman would make the railroad and warehouseman parties to a common enterprise. Defendant pays the rail charges, or becomes absolutely liable for them, when the freight is delivered to it. It does not participate in the charges of the rail carrier nor does the latter participate in its charges, but each performs the service it renders under its own charges without sharing in any way either the charges or the liability of the other.

In the case of Baltimore Association of Commerce et al. v. American Hawaiian Steamship Company et al. before the Interstate Commerce Commission, the very question was involved which is involved here. While the case was dismissed before being heard by the commission, Examiner Hurley filed a report finding that the commission was without jurisdiction over the water carriers, and what he says as to notations on bills of lading and the payment of rail charges is of interest here. Said he:

"The indication of a Pacific coast port in the descriptive portion, or body, of the railroad bill of lading is but incidental and of
208 no binding force or effect with respect to the contract of carriage. The evidence shows that the indication in the steamship bills of the railroad car from which the traffic is received is merely for convenience and identification purposes to enable shippers or carriers to check rates or to assist in placing responsibility for damage. In accepting the shipment from the rail carrier and in advancing the rail charges at the North Atlantic port the steamship company obviously is acting as agent for the Pacific coast consignee. The relationship between the steamship company and the railroad can not be said to be different than that between the railroad carriers and agents of other consignees. The absorption of stevedoring and lightering charges by the rail carriers does not differentiate intercoastal traffic from traffic consumed at the port itself or from export traffic. As heretofore stated, the rail carrier's contract ends with delivery of the traffic on the pier. The transfer of the goods from the pier to the vessel is done by stevedores acting for the water carriers, and the charges are absorbed by the water carrier.

"The method of handling the traffic under consideration, although indicative of an arrangement for its prompt and efficient interchange, is lacking in the essentials necessary to constitute a 'common arrangement' between the rail and the water carriers. On the contrary, it clearly indicates their independence."

In the very recent case of Luckenbach Steamship Co., Inc., v. Southern Railway Co. et al., decided October 8, 1929, the commission itself said that water carriers handling freight substantially in the manner in which it is handled by defendant here were not subject to the jurisdiction of the commission. In that case the steamship company which handled freight which had been or was to be transported by rail carriers for a part of its journey petitioned that these carriers be required to file schedules of proportional rates lower than their regular local rates for rail carriage. In denying the
209 petition, the commission, speaking through Commissioner Brainerd, used the following pertinent language:

"The movement by water and rail in connection with complainant's steamships is not on through bills of lading. Complainant is not a party to joint rates with defendants. There is no arrangement for through and continuous transportation from origin to inland destination in connection with complainant's line and its rates

and charges are not subject to regulation by this commission. * * * Complainant's charges on this traffic for its long haul vary from time to time. They have been as low as 30 cents in recent years. Its rates may be changed at any time at its discretion without being subject to suspension by this commission. * * * Complainant, acting as a free lance in the transportation world, refuses to place itself in a position wherein its rates and charges might become subject to regulation by this commission and yet seeks to invoke our aid in assisting it to divert from carriers subject to the act, and whose rates and charges are subject to regulation by us, certain traffic which the rail carriers now enjoy, on the plea that the situation, competitive or otherwise, does not justify the conduct of the rail carriers here complained of whose lines are used to complete the transportation of traffic brought into the ports by the complainant's boat lines and destined to points beyond via rail."

The Government relies upon a line of cases including B. & O. S. W. R. R. v. Settle, 260 U. S. 166; Baer Bros. v. Denver & R. G. R. R., 233 U. S. 479; Texas & N. O. R. R. v. Sabine Tram Co., 227 U. S. 111; and So. Pac. Terminal Co. v. Interstate Com. Com., 219 U. S. 498, which hold that whether a shipment is interstate or intrastate depends upon the essential nature of the movement, and that neither through billing, uninterrupted movement, continuous possession by the carrier, nor unbroken bulk is an essential of a through interstate shipment. Those cases, however, have no application here.

210 There is no question that the shipments here are moving in interstate commerce from the time they leave the point of origin until they reach their ultimate destination, but this would be true even though a part of the transportation were made without the aid of a common carrier. Champlain Realty Co. v. Town of Brattleboro, 260 U. S. 366. The question here is not as to the ultimate destination of the shipment, as in those cases, but whether there was a common arrangement between the carriers by which they agreed to carry it to this ultimate destination. Unquestionably the freight in question is bound for an ultimate destination in Florida, but it reaches there, not by virtue of any common arrangement between the carriers but by virtue of contracts made by the shipper with each carrier separately. This, we think, is decisive of the case.

In holding that the defendant was not shown to be subject to the requirements of the statute, we think that the decision of the learned judge below was correct; and same is accordingly affirmed.

Affirmed.

211 In United States Circuit Court of Appeals, Fourth Circuit

No. 2908.

UNITED STATES OF AMERICA, APPELLANT vs. MUNSON STEAMSHIP LINE, APPELLEE.

Appeal from the District Court of the United States for the District of Maryland

Judgment

Filed and entered January 18, 1930

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Maryland, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

JOHN J. PARKER,
U. S. Circuit Judge.

JANUARY 18, 1930.

Minute entries

Feb. 18, 1930

On another day, to wit, February 18, 1930, the mandate of this court in this cause is issued and transmitted to the United States District Court at Baltimore, Maryland, in due form.

212 Same day, the original petition for appeal and order allowing appeal are returned to the clerk of the District Court at Baltimore, Maryland.

[Clerk's certificate to foregoing transcript omitted in printing.]

213 Supreme Court of the United States

Order allowing certiorari

Filed May 26, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1930

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No. 85

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES OF AMERICA, PETITIONER

v.

MUNSON STEAMSHIP LINE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. ———

UNITED STATES OF AMERICA, PETITIONER

v.

MUNSON STEAMSHIP LINE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

PETITION

The Attorney General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Fourth Circuit entered in the above-entitled cause on January 18, 1930 (R. 203), affirming the judgment of the District Court of the United States for the District of Maryland. (R. 18.)

STATEMENT

The United States, at the request of the Interstate Commerce Commission (hereinafter sometimes called "the Commission"), filed under Section 20 (9) of the Interstate Commerce Act a peti-

tion for writ of mandamus praying that respondent be required to file with the Commission as required by Section 6 of the Interstate Commerce Act schedules and tariffs of rates and charges on property which was being transported, partly by railroad and partly by water, under a common arrangement for continuous carriage and shipment from interior points to ports in Florida. (R. 1–9.) The petition alleged that property brought by rail to Baltimore, Maryland, and carried on respondent's steamships to Miami and Jacksonville, Florida, was moving under a common arrangement for through shipment. Respondent's answer alleged that this transportation consisted of an independent rail and water movement and denied that respondent was obligated to file any tariffs with the Commission. (R. 10–15.)

Respondent is a New York corporation not under the control or management of any railroad. (R. 102.) It maintains a steamship line with regular fortnightly sailings from Baltimore to Florida and Cuba. (R. 27.) The Baltimore & Ohio Railroad Company, Pennsylvania Railroad Company and Western Maryland Railway Company carry freight from various interior points for delivery to respondent's boats at Baltimore. (R. 10–11.) This freight, when destined for Havana, Cuba, moves on through bills of lading (R. 65), but when destined for Florida ports the transportation is effected as follows:

If a shipper at an interior point wishes to send goods to Miami or Jacksonville via respondent's steamship line from Baltimore, respondent will inform him as to the amount of the total transportation charge, stating separately the railroad tariff to Baltimore and respondent's charges from Baltimore to Florida destination. (R. 31, 35, 46–47.) The railroad issues a local bill of lading calling for transportation to Baltimore and naming as consignee either respondent or the ultimate consignee in care of, or "notify," respondent. (R. 119, 137, 149, 161, 173.) The name of the ultimate consignee and the Florida destination are noted on the face of the bill of lading. (R. 119, 137, 149, 161.) The shipper sends the bill of lading to respondent with a letter of instruction as to the ultimate consignee. (R. 36.) On the arrival of the goods in Baltimore the railroad notifies respondent. (R. 37.) The latter advises the railroad of the ship which will carry the goods to Florida and, after the railroad delivers the freight, respondent receives it, puts it on board and receipts to the railroad for delivery. (R. 37.) If the railroad's bill of lading is an order bill, the goods are delivered only against surrender of this bill by respondent. (R. 39–40.) Respondent pays the railroad charges for the shipment to Baltimore and issues its ocean bill of lading from Baltimore to the Florida destination. (R. 37–38.) It there collects from the consignee the total transportation charge from point of origin to destination. (R. 37–38.)

Freight could be transported in this way from interior points to Florida ports without any act or intervention by the shipper from the time of delivery to the initial railroad carrier to the time of receipt of the goods by the Florida consignee other than the shipper's instructions to respondent as to the Florida consignee, which instructions might be given when the goods were delivered to the railroad. (R. 36, 52, 85.) The physical movement from point of origin to destination was the same as in the case of goods moving on a through bill of lading. (R. 73.) The Merchants & Miners Transportation Company carried goods from Baltimore to Florida ports on through bills of lading covering railroad transportation from interior points to Baltimore and tariffs covering such transportation were filed with the Commission. (R. 26, 65.)

The railroads serving Baltimore cooperated with respondent in arranging to have bills of lading issued at interior points directed to respondent at Baltimore and showing on their face the ultimate destination in Florida. The Pennsylvania Railroad issued a circular letter to its agents quoting a letter from the respondent outlining this method of shipping to Florida ports by respondent's steamship line. (R. 91.) A circular issued by the Baltimore & Ohio (R. 63) after stating that respondent would not accept freight on through bills of lading on traffic destined to Florida advised (R. 65):

> Rail bills of lading should show name of ultimate consignee, c/o the designated steam-

ship line, destination Locust Point, Baltimore, Md., and in the body of the bill of lading should appear notation indicating ultimate destination in Florida.

The foreign freight agent of the Western Maryland familiar with railroad shipments delivered to respondent at Baltimore (R. 94) admitted that his company might have written letters of instruction similar to the circulars issued by the Pennsylvania and the Baltimore & Ohio. (R. 95–96.) Shippers were generally informed as to the method of handling rail and water shipments from interior points to Florida ports via respondent's steamship line from Baltimore. (R. 51–52.)

The case was tried before a jury. After the United States and respondent had presented their evidence the District Court directed a judgment for the defendant and on appeal to the Circuit Court of Appeals that court affirmed the judgment of the District Court. (R. 17, 203.)

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred:

I. In holding that there was not sufficient evidence to go to the jury that respondent was a common carrier engaged in the transportation of property partly by railroad and partly by water under a common control, management, or arrangement for a continuous carriage or shipment.

II. In holding that the District Court correctly directed judgment for the defendant.

REASONS FOR GRANTING THE WRIT

I. Under Section 1 of the Interstate Commerce Act water carriers are subject to the Act when engaged in the transportation of property moving from one State to another partly by railroad and partly by water "when both are used under a common control, management, or arrangement for a continuous carriage or shipment." This Court has never passed upon the question whether a "common arrangement" within the meaning of Section 1 may be found when an initial rail carrier and a connecting water carrier customarily carry continuous through shipments requiring no intervention by the shipper from the time the goods are delivered to the initial carrier until delivery by the connecting water carrier at ultimate destination, and the initial carrier cooperates with the connecting carrier in carriage beyond its own lines, at least to the extent of procuring notations to be made by the shippers on its bills of lading naming the ultimate consignee and destination of the freight, pursuant to which delivery is made by the connecting carrier unless contrary instructions are received from the shipper.

The Commission considers it important to have an authoritative determination of the application of the Commerce Act to rates and charges of water carriers transporting goods under these circumstances. The present suit was brought to test this question.

II. The Government submits that the Circuit Court of Appeals failed to give proper consideration to the decision of this Court in *Baer Bros.* v. *Denver & R. G. R. R.*, 233 U. S. 479. That case held that charges of a railroad for an intrastate haul on a local bill of lading were subject to the provisions of the Commerce Act when it received from a connecting railroad goods which had been delivered to the latter railroad with directions to make an interstate shipment over the two railroads. The controversy involved the provisions of Section 1 of the Commerce Act both before and after its amendment by the Hepburn Act of June 29, 1906 (c. 3591, 34 Stat. 584).

The court followed the interpretation of Section 1 of the original Act adopted by this Court in *Cincinnati N. O. & T. P. Ry.* v. *Interstate Commerce Commission,* 162 U. S. 184, 190, 192–193, to the effect that charges of a railroad carrying goods intrastate were not subject to the Act unless the railroad was engaged in interstate transportation with another railroad or a water carrier when both were used under a common control, management, or arrangement. The Circuit Court of Appeals, in holding *Baer Bros.* v. *Denver & R. G. R. R., supra,* inapplicable to the instant case on the ground that it involved only the question of whether the shipment was interstate, and not the meaning of the words "common arrangement," as used in Section 1 of the Act (R. 202–203), ap-

pears to have misconstrued the decision of this Court. This misconstruction may have been seriously prejudicial owing to the similarity of the question there presented to the issue here.

Wherefore, it is respectfully submitted that this petition should be granted.

WILLIAM D. MITCHELL,
Attorney General.

APRIL, 1930.

BRIEF IN SUPPORT OF PETITION

OPINIONS BELOW

The opinion of the District Court (R. 17, 112) is reported in 33 F. (2d) 211 and the opinion of the Circuit Court of Appeals (R. 193) is reported in 37 F. (2d) 681.

JURISDICTION

The decree of the Circuit Court of Appeals was entered January 18, 1930. (R. 203.) The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The question presented is whether it can be held as a matter of law that there is not a "common arrangement" between railroads and a water carrier within the meaning of Section 1 of the Interstate Commerce Act when, pursuant to a well-established custom, goods are shipped interstate by railroad and water as a part of a continuous shipment not requiring any intervention by the shipper from the time the goods are delivered to the initial carrier to the time when the water carrier delivers them at destination and when the railroads connecting with the water carrier cooperate with it in informing shippers as to the notations on the railroad bills of lading which make possible such through shipment.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are as follows:

> Section 1 (1). That the provisions of this Act shall apply to common carriers engaged in—
>
> (a) the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipments;
>
> * * * * *
>
> from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States. (C. 91, 41 Stat. 456, 474; U. S. C. Title 49, Sec. 1.)
>
> Sec. 6 (1). That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges

applied to the through transportation. * * * (C. 3591, 34 Stat. 584, 586; c. 91, 41 Stat. 456, 483; U. S. C., Title 49, Sec. 6.)

Sec. 20 (9). That the * * * district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said Acts, or any of them. (C. 3591, 34 Stat. 584, 594; c. 91, 41 Stat. 456, 494; U. S. C., Title 49, Sec. 20.)

STATEMENT

A statement of the facts and of the errors relied upon will be found in the petition.

ARGUMENT

THERE WAS SUFFICIENT EVIDENCE TO SUPPORT A FINDING THAT RESPONDENT AND THE CONNECTING RAILROADS TRANSPORTED FREIGHT FROM INTERIOR POINTS TO FLORIDA UNDER A COMMON ARRANGEMENT FOR A CONTINUOUS SHIPMENT WITHIN THE MEANING OF SECTION 1 OF THE INTERSTATE COMMERCE ACT

The Government concedes that respondent was not required to file tariffs with the Commission unless it was engaged in continuous interstate rail and water shipments pursuant to a common con-

trol, management, or arrangement. The Government also concedes that there was no common control or management between respondent and the connecting railroads. It is equally clear, on the other hand, that continuous rail and water shipments from interior points to Florida could be inferred from the evidence. *B. & O. S. W. R. R. Co.* v. *Settle*, 260 U. S. 166. The narrow issue, therefore, is whether the evidence would support a finding that there was a "common arrangement" within the meaning of Section 1 of the Commerce Act for such continuous rail and water shipments.

The Circuit Court of Appeals was of the opinion that water carriers were made subject to the provisions of the Act solely to prevent evasion thereof by railroads. The Government submits that this is not a sufficient explanation of the purpose of Congress in bringing within the Act continuous interstate rail and water transportation under a common control, management, or arrangement. The rates, charges, and practices of railroads engaged in such transportation would be subject to the Act, although the rates and charges for the water part of the transportation were not governed by the Act. Thus, in the present case where the railroads and respondent contend that respondent need not file its tariffs with the Commission, it is conceded that the connecting railroads can collect for their part of the transportation only the amount of their tariffs on file with the Commission from the interior points to Baltimore. It was therefore not neces-

sary to subject charges for water transportation to the provisions of the Act in order to prevent preferences, discrimination, or other illegal practices by railroads engaged in continuous interstate rail and water transportation, whether they were operating under a common control, management, or arrangement with a water carrier or not.

If the preferences and discrimination of railroad rates are undesirable, similar preferences and discrimination in rates for water transportation would seem likewise undesirable. But water transportation is frequently not standardized to the same degree as railroad transportation, and Congress has not generally required the filing of rates, other than maximum rates, for water transportation. The probable reason for requiring the filing of rates for water transportation when carried on under a common control, management or arrangement for continuous rail and water carriage or shipment is that such water transportation was regarded as sufficiently standardized to justify the requirement that the rates for this water transportation be the same for all shippers as long as they remain in effect. The Government is of the opinion that the words "common arrangement" have the same meaning when applied to continuous transportation by rail and water that they had in the original Act when applied to continuous transportation by two connecting railroads and that decisions of this Court construing these words as used in Section 1 of the original Interstate Commerce Act are relevant here.

Section 1 of the Interstate Commerce Act of February 4, 1887 (c. 104, 24 Stat. 379), reads:

> That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States * * *

The Hepburn Act of June 29, 1906 (c. 3591, 34 Stat. 584), changed the above provision by enclosing in parentheses the words "or partly by railroad and partly by water when both are used, under a common control, management, or arrangement for a continuous carriage or shipment," thereby limiting this phrase to rail and water transportation.

Cincinnati, N. O. & T. P. Ry. v. *Interstate Commerce Commission,* 162 U. S. 184, *supra,* decided in 1896, was a suit to enforce an order of the Commission enjoining three railroads from collecting higher rates on shipments from Cincinnati, Ohio, to Social Circle, Georgia, than on shipments from Cincinnati to Augusta, Georgia, which was 119 miles farther from Cincinnati. The defense was that the goods were carried from Cincinnati to Atlanta, Georgia, by the first two railroads as a through shipment; that these two railroads and

the Georgia Railroad Company also carried through shipments to Augusta, but that the Georgia Railroad Company had given instructions against through shipments to Social Circle; that the rate from Cincinnati to Social Circle was made up of the through rate to Atlanta plus the local rate of the Georgia Railroad Company from Atlanta to Social Circle; and that this local rate was not subject to the jurisdiction of the Commission. This Court defined the issue as follows (p. 189):

> The first question that we have to consider is whether the defendants, in transporting property from Cincinnati to Social Circle, are engaged in such transportation "under a common control, management or arrangement for a continuous carriage or shipment" within the meaning of that language, as used in the act to regulate commerce.

The Court held the Commission's order valid. It said (p. 193):

> All we wish to be understood to hold is, that when goods shipped under a through bill of lading, from a point in one State to a point in another, are received in transit by a state common carrier, under a conventional division of the charges, such carrier must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the act to regulate commerce. When we speak of a through bill of lading we are referring to the usual method in use by connecting com-

panies, and must not be understood to imply that a common control, management or arrangement might not be otherwise manifested.

Baer Bros. v. *Denver & R. G. R. R.*, 233 U. S. 479, *supra*, was a suit to recover excessive charges, as fixed in a reparation order of the Commission, for transporting plaintiff's beer during the years 1902 to 1907. The beer was delivered at St. Louis, Missouri, to the Missouri Pacific Railway Company, which acknowledged its receipt "in good order to be delivered to the Baer Brothers Company at Leadville, Colorado, via the Denver & Rio Grande." No through bill of lading was issued as the two companies had not established a through route. The Missouri Pacific carried the beer on a local waybill to Pueblo, Colorado, and the Denver & Rio Grande carried it from there to Leadville on a local waybill, naming the Missouri Pacific as consignor and the plaintiff as consignee. On the first shipment complained of the Denver & Rio Grande, on receiving the beer at Pueblo, paid the Missouri Pacific's charges from St. Louis and collected from the plaintiff at Leadville its own charges and the amount advanced to the Missouri Pacific; on subsequent shipments the transportation charges from St. Louis to Leadville were paid in advance at St. Louis, but were divided between the two railroads according to their respective rates from St. Louis to Pueblo and from Pueblo to Leadville. *Baer Bros. Mercantile Co.* v. *Mo. Pac. Ry. Co.*, 13 I. C. C.

329, 330–331. The Missouri Pacific's published tariff from St. Louis to Pueblo was conceded to be reasonable, but the Commission found that the Denver & Rio Grande's charges from Pueblo to Leadville were excessive.

The Denver & Rio Grande contended that in each instance it had received the beer at Pueblo, where a new waybill was issued, and forwarded it as an intrastate shipment on an intrastate rate and that the Commission had no jurisdiction to inquire as to the reasonableness of such intrastate rate. This Court rejected the contention. After quoting from *Cincinnati, N. O. & T. P. Ry.* v. *Interstate Commerce Commission, supra,* at p. 193, it said (p. 491):

> This common arrangement does not depend upon the establishment of a through route or the issue and recognition of a through bill of lading, but may be otherwise manifested. *Ibid.*
>
> That there was a common arrangement between the two carriers here was shown by the long-continued course in dealing, and the division of the freight, with the knowledge that it had been paid as compensation for the single haul. * * *

The facts of this case are strikingly like those here involved. In each case the carriers and the shipper intended a through shipment, although through bills of lading were not issued; in each case the initial carrier, in acknowledging receipt of the freight, indicated that a through shipment was con-

templated, but the goods moved on local bills and no through tariff was on file with the Commission; in each case the initial carrier received the amount of its published tariff for the transportation performed by it, and in each case the shipper was not required to intervene from the time the goods were delivered to the initial carrier to the time they arrived at destination. The decision of the Circuit Court of Appeals in the instant case that there was not sufficient evidence to go to the jury of a common arrangement for a continuous shipment seems inconsistent with the finding of such an arrangement in the *Baer Bros. case.* The fact that shippers were free to change the instructions for delivery at point of destination noted on the bills of lading issued by the initial carrier, does not seem sufficient to distinguish this case from the *Baer Bros. case.*

The Circuit Court of Appeals applied the doctrine of *ejusdem generis* to the words "control, management, or arrangement." The Government submits that the first two words are not sufficiently more specific than the last to make this doctrine applicable. They are all general terms, but they relate to different situations and each word should be given its natural meaning. The successive receipt and forwarding of freight in interstate commerce by two or more connecting carriers under any arrangement by which they mutually facilitate continuous shipments over their lines in the same way as freight is transported on through bills of lading

is, it is believed, evidence of a common arrangement within the meaning of the statute. *United States* v. *Wood,* 145 Fed. 405, 411.

The Circuit Court of Appeals quoted from the proposed report by an examiner of the Commission in the case of *Baltimore Association of Commerce et al.* v. *American Hawaiian Steamship Company et al.,* No. 20306, I. C. C. This case was not considered by the Commission, being dismissed at the request of the complainant. The report proposed by an examiner has no weight as an authority or precedent and is not binding even upon another examiner of the Commission.

There is nothing in the case of *Luckenbach Steamship Co., Inc.,* v. *Southern Railway Co.,* 157 I. C. C. 752, contrary to the Government's contention here. The statement of facts shows merely that the complainant steamship line carried freight from the Pacific Coast to southeastern ports on its bills of lading and that railroads carried the freight from these ports to interior points on railroad bills of lading and that no through route had been established. These facts alone did not constitute a common arrangement for a continuous water and rail shipment. The complainant, moreover, was asking the Commission to adjust the rates of the connecting railroads on the theory that its own rates were not required to be filed with the Commission and the Commission merely decided that, on complainant's own theory of the case, it was not entitled to the relief requested.

CONCLUSION

The Government submits that the decision of the Circuit Court of Appeals was erroneous and that in view of the importance of the question decided in determining the scope of the jurisdiction of the Interstate Commerce Act over continuous rail and water transportation the petition for a writ of certiorari should be granted.

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APRIL, 1930.

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No. 85.

In the Supreme Court of the United States

OCTOBER TERM, 1930

THE UNITED STATES OF AMERICA, PETITIONER

v.

MUNSON STEAMSHIP LINE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the District Court (R. 17, 112) is reported in 33 F. (2d) 211, and the opinion of the Circuit Court of Appeals (R. 194) is reported in 37 F. (2d) 681.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 18, 1930. (R. 204.) The petition for certiorari was filed April 17, 1930, and certiorari was granted May 26, 1930, 281 U. S. 715. (R. 204.) The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The question presented is whether it can be held as a matter of law that there is not a "common arrangement" between railroads and a water carrier within the meaning of Section 1 of the Interstate Commerce Act when, pursuant to a well-established custom, goods are shipped interstate by railroad and water as a part of a continuous shipment not requiring any intervention by the shipper from the time the goods are delivered to the initial carrier to the time when the water carrier delivers them at destination and when the railroads connecting with the water carrier cooperate with it in informing shippers as to the notations on the railroad bills of lading which make possible such through shipment.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are as follows:

> Section 1 (1). That the provisions of this Act shall apply to common carriers engaged in—
>
> (a) the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipments;
>
> * * * * *
>
> from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United

States. (C. 91, 41 Stat. 456, 474; U. S. C. Title 49, Sec. 1.)

SEC. 6 (1). That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection as aforesaid the separately established rates, fares, and charges applied to the through transportation. * * * (C. 3591, 34 Stat. 584, 586; c. 91, 41 Stat. 456, 483; U. S. C., Title 49, Sec. 6.)

SEC. 20 (9). That the * * * district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said Acts, or any of them. (C. 3591, 34 Stat. 584, 594; c. 91, 41 Stat. 456, 494; U. S. C., Title 49, Sec. 20.)

STATEMENT

The United States, at the request of the Interstate Commerce Commission, filed under Section 20 (9) of the Interstate Commerce Act a petition for writ of mandamus praying that respondent be required to file with the Commission as required by Section 6 of the Interstate Commerce Act schedules and tariffs of rates and charges on property which was being transported, partly by railroad and partly by water, under a common arrangement for continuous carriage and shipment from interior points to ports in Florida. (R. 1–9.) The petition alleged that property brought by rail to Baltimore, Maryland, and carried on respondent's steamships to Miami and Jacksonville, Florida, was moving under a common arrangement for through shipment. Respondent's answer alleged that this transportation consisted of an independent rail and water movement and denied that respondent was obligated to file any tariffs with the Commission. (R. 10–15.)

The answer of the respondent and the evidence tended to show the following facts:

Respondent is a New York corporation not under the control or management of any railroad. (R. 102.) It maintains a steamship line with regular fortnightly sailings from Baltimore to Florida and Cuba. (R. 27.) The Baltimore & Ohio Railroad Company, Pennsylvania Railroad Company, and Western Maryland Railway Company carry freight

from various interior points for delivery to respondent's boats at Baltimore. (R. 10–11.) This freight, when destined for Havana, Cuba, moves on through bills of lading (R. 65), but when destined for Florida ports the transportation is effected as follows:

If a shipper at an interior point wishes to send goods to Miami or Jacksonville via respondent's steamship line from Baltimore, respondent will inform him as to the amount of the total transportation charge, stating separately the railroad tariff to Baltimore and respondent's charges from Baltimore to Florida destination. (R. 31, 35, 46–47.) The railroad issues a local bill of lading calling for transportation to Baltimore and naming as consignee either respondent or the ultimate consignee in care of, or "notify," respondent. (R. 119, 137, 149, 161, 173.) The name of the ultimate consignee and the Florida destination are noted on the face of the bill of lading. (R. 119, 137, 149, 161.) The shipper sends the bill of lading to respondent with a letter of instruction as to the ultimate consignee. (R. 36.) On the arrival of the goods in Baltimore the railroad notifies respondent. (R. 37.) The latter advises the railroad of the ship which will carry the goods to Florida and, after the railroad delivers the freight, respondent receives it, puts it on board, and receipts to the railroad for delivery. (R. 37.) If the railroad's bill of lading is an order bill, the goods are delivered only against surrender of this bill by respondent. (R. 39–40.). Respondent pays

the railroad charges for the shipment to Baltimore and issues its ocean bill of lading from Baltimore to the Florida destination. (R. 37–38.) It there collects from the consignee the total transportation charge from point of origin to destination. (R. 37–38.)

Freight could be transported in this way from interior points to Florida ports without any act or intervention by the shipper from the time of delivery to the initial railroad carrier to the time of receipt of the goods by the Florida consignee other than the shipper's instructions to respondent as to the Florida consignee, which instructions might be given when the goods were delivered to the railroad. (R. 36, 52, 85.) The physical movement from point of origin to destination was the same as in the case of goods moving on a through bill of lading. (R. 73.) The Merchants & Miners Transportation Company carried goods from Baltimore to Florida ports on through bills of lading covering railroad transportation from interior points to Baltimore and tariffs covering such transportation were filed with the Commission. (R. 26, 65.)

The railroads serving Baltimore cooperated with respondent in arranging to have bills of lading issued at interior points directed to respondent at Baltimore and showing on their face the ultimate destination in Florida. The Pennsylvania Railroad issued a circular letter to its agents quoting a letter from the respondent outlining this method of shipping to Florida ports by respondent's steam-

ship line. (R. 91.) A circular issued by the Baltimore & Ohio (R. 63) after stating that respondent would not accept freight on through bills of lading on traffic destined to Florida advised (R. 65):

> Rail bills of lading should show name of ultimate consignee, c/o the designated steamship line, destination Locust Point, Baltimore, Md., and in the body of the bill of lading should appear notation indicating ultimate destination in Florida.

The foreign freight agent of the Western Maryland familiar with railroad shipments delivered to respondent at Baltimore (R. 94) admitted that his company might have written letters of instruction similar to the circulars issued by the Pennsylvania and the Baltimore & Ohio. (R. 95–96.) Shippers were generally informed as to the method of handling rail and water shipments from interior points to Florida ports via respondent's steamship line from Baltimore. (R. 51–52.)

The case was tried before a jury. After the United States and respondent had presented their evidence the District Court directed a judgment for the defendant and on appeal to the Circuit Court of Appeals that court affirmed the judgment of the District Court. (R. 117, 204.)

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred:

I. In holding that there was not sufficient evidence to go to the jury that respondent was a com-

mon carrier engaged in the transportation of property partly by railroad and partly by water under a common control, management, or arrangement for a continuous carriage or shipment.

II. In holding that the District Court correctly directed judgment for the defendant.

SUMMARY OF ARGUMENT

The narrow issue in this case is whether there was evidence to support a finding that there was a "common arrangement" within the meaning of Section 1 of the Interstate Commerce Act. The Government contends that the words "common arrangement" have the same meaning when applied to continuous transportation by rail and water that they had in the original Act when applied to continuous transportation by connecting railroads.

The successive receipt and forwarding of freight in interstate commerce by two or more connecting carriers under any arrangement by which they mutually facilitate continuous shipments over their lines in the same way as freight is transported on through bills of lading is, we believe, evidence of a common arrangement within the meaning of the statute. This view is supported by the decisions of this Court in *Cincinnati, N. O. & T. P. Ry.* v. *Interstate Commerce Commission*, 162 U. S. 184, and *Baer Bros.* v. *Denver & R. G. R. R.*, 233 U. S. 479.

ARGUMENT

The Government concedes that respondent was not required to file tariffs with the Commission unless it was engaged in continuous interstate rail and water shipments pursuant to a common control, management, or arrangement. The Government also concedes that there was no common control or management between respondent and the connecting railroads. It is equally clear, on the other hand, that continuous rail and water shipments from interior points to Florida could be inferred from the evidence. *B. & O. S. W. R. R. Co.* v. *Settle,* 260 U. S. 166. The narrow issue, therefore, is whether the evidence would support a finding that there was a "common arrangement" within the meaning of Section 1 of the Interstate Commerce Act for such continuous rail and water shipments.

The Circuit Court of Appeals was of the opinion that water carriers were made subject to the provisions of the Act solely to prevent evasion thereof by railroads. The Government submits that this is not a sufficient explanation of the purpose of Congress in bringing within the Act continuous interstate rail and water transportation under a common control, management, or arrangement. The rates, charges, and practices of railroads engaged in such transportation would be subject to the Act, although the rates and charges for the water part of the transportation were not governed by the

Act. Thus, in the present case where the railroads and respondent contend that respondent need not file its tariffs with the Commission, it is conceded that the connecting railroads can collect for their part of the transportation only the amount of their tariffs on file with the Commission from the interior points to Baltimore. It was therefore not necessary to subject charges for water transportation to the provisions of the Act in order to prevent preferences, discrimination, or other illegal practices by railroads engaged in continuous interstate rail and water transportation, whether they were operating under a common control, management, or arrangement with a water carrier or not.

If the preferences and discrimination of railroad rates are undesirable, similar preferences and discrimination in rates for water transportation would seem likewise undesirable. But water transportation is frequently not standardized to the same degree as railroad transportation, and Congress has not generally required the filing of rates, other than maximum rates, for water transportation. The probable reason for requiring the filing of rates for water transportation when carried on under a common control, management, or arrangement for continuous rail and water carriage or shipment is that such water transportation was regarded as sufficiently standardized to justify the requirement that the rates for this water transportation be the same for all shippers as long as they remain in effect.

The Government is of the opinion that the words "common arrangement" have the same meaning when applied to continuous transportation by rail and water that they had in the original Act when applied to continuous transportation by two connecting railroads and that decisions of this Court construing these words as used in Section 1 of the original Interstate Commerce Act are relevant here.

Section 1 of the Interstate Commerce Act of February 4, 1887, c. 104, 24 Stat. 379, reads:

> That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States * * *

The Hepburn Act of June 29, 1906, c. 3591, 34 Stat. 584, changed the above provision by enclosing in parentheses the words "or partly by railroad and partly by water when both are used, under a common control, management, or arrangement for a continuous carriage or shipment."

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rates on shipments from Cincinnati, Ohio, to Social Circle, Georgia, than on shipments from Cincinnati to Augusta, Georgia, which was 119 miles farther from Cincinnati. The defense was that the goods were carried from Cincinnati to Atlanta, Georgia, by the first two railroads as a through shipment; that these two railroads and the Georgia Railroad Company also carried through shipments to Augusta, but that the Georgia Railroad Company had given instructions against through shipments to Social Circle; that the rate from Cincinnati to Social Circle was made up of the through rate to Atlanta plus the local rate of the Georgia Railroad Company from Atlanta to Social Circle; and that this local rate was not subject to the jurisdiction of the Commission. This Court defined the issue as follows (p. 189):

> The first question that we have to consider is whether the defendants, in transporting property from Cincinnati to Social Circle, are engaged in such transportation "under a common control, management, or arrangement for a continuous carriage or shipment" within the meaning of that language, as used in the act to regulate commerce.

The Court held the Commission's order valid. It said (p. 193):

> All we wish to be understood to hold is, that when goods shipped under a through bill of lading, from a point in one State to a point in another, are received in transit by a

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Baer Bros. v. *Denver & R. G. R. R.*, 233 U. S. 479, was a suit to recover excessive charges as fixed in a reparation order of the Commission for transporting plaintiff's beer during the years 1902 to 1907. The beer was delivered at St. Louis, Missouri, to the Missouri Pacific Railway Company, which acknowledged its receipt "in good order to be delivered to the Baer Brothers Company at Leadville, Colorado, via the Denver & Rio Grande." No through bill of lading was issued as the two companies had not established a through route. The Missouri Pacific carried the beer on a local waybill to Pueblo, Colorado, and the Denver & Rio Grande carried it from there to Leadville on a local waybill, naming the Missouri Pacific as consignor and the plaintiff as consignee. On the first shipment complained of the Denver & Rio Grande, on receiving the beer at Pueblo, paid the Missouri Pacific's charges from St. Louis and collected from the plain-

tiff at Leadville its own charges and the amount advanced to the Missouri Pacific; on subsequent shipments the transportation charges from St. Louis to Leadville were paid in advance at St. Louis, but were divided between the two railroads according to their respective rates from St. Louis to Pueblo and from Pueblo to Leadville. *Baer Bros. Mercantile Co.* v. *Mo. Pac. Ry. Co.*, 13 I. C. C. 329, 330–331. The Missouri Pacific's published tariff from St. Louis to Pueblo was conceded to be reasonable, but the Commission found that the Denver & Rio Grande's charges from Pueblo to Leadville were excessive.

The Denver & Rio Grande contended that in each instance it had received the beer at Pueblo, where a new waybill was issued, and forwarded it as an intrastate shipment on an intrastate rate and that the Commission had no jurisdiction to inquire as to the reasonableness of such intrastate rate. This Court rejected the contention. After quoting from *Cincinnati, N. O. & T. P. Ry.* v. *Interstate Commerce Commission, supra*, at p. 193, it said (p. 491):

> This common arrangement does not depend upon the establishment of a through route or the issue and recognition of a through bill of lading, but may be otherwise manifested. *Ibid.*
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> That there was a common arrangement between the two carriers here was shown by the long-continued course in dealing, and the division of the freight, with the knowledge

that it had been paid as compensation for the single haul. * * *

The facts of this case are strikingly like those here involved. In each case the carriers and the shipper intended a through shipment, although through bills of lading were not issued; in each case the initial carrier, in acknowledging receipt of the freight, indicated that a through shipment was contemplated, but the goods moved on local bills and no through tariff was on file with the Commission; in each case the initial carrier received the amount of its published tariff for the transportation performed by it. The decision of the Circuit Court of Appeals in the instant case that there was not sufficient evidence to go to the jury of a common arrangement for a continuous shipment seems inconsistent with the finding of such an arrangement in the *Baer Bros. case*. The fact that shippers sent the bill of lading to the respondent with a letter of instructions as to the ultimate consignee, and that shippers were free to change the instructions for delivery at point of destination noted on the bills of lading issued by the initial carrier, does not seem sufficient to distinguish this case from the *Baer Bros. case*.

The Circuit Court of Appeals applied the doctrine of *ejusdem generis* to the words "control, management, or arrangement." The Government submits that the first two words are not sufficiently more specific than the last to make this doctrine

applicable. They are all general terms, but they relate to different situations and each word should be given its natural meaning. The successive receipt and forwarding of freight in interstate commerce by two or more connecting carriers under any arrangement by which they mutually facilitate continuous shipments over their lines in the same way as freight is transported on through bills of lading is, it is believed, evidence of a common arrangement within the meaning of the statute. *United States* v. *Wood,* 145 Fed. 405, 411 (E. D. Pa.).

The Circuit Court of Appeals quoted from the proposed report by an examiner of the Commission in the case of *Baltimore Association of Commerce et al* v. *American Hawaiian Steamship Company et al.,* No. 20306, I. C. C. This case was not considered by the Commission, being dismissed at the request of the complainant. The report proposed by an examiner has no weight as an authority or precedent and is not binding even upon another examiner of the Commission.

There is nothing in the case of *Luckenbach Steamship Co., Inc.,* v. *Southern Railway Co.,* 157 I. C. C. 752, contrary to the Government's contention here. The statement of facts shows merely that the complainant steamship line carried freight from the Pacific Coast to southeastern ports on its bills of lading and that railroads carried the freight from these ports to interior points on railroad bills of lading and that no through route had been estab-

lished. These facts alone did not constitute a common arrangement for a continuous water and rail shipment. The complainant, moreover, was asking the Commission to adjust the rates of the connecting railroads on the theory that its own rates were not required to be filed with the Commission and the Commission merely decided that, on complainant's own theory of the case, it was not entitled to the relief requested.

CONCLUSION

We submit that the judgment of the Circuit Court of Appeals was erroneous and should be reversed.

Respectfully submitted.

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OCTOBER TERM, 1929.

No. 85

UNITED STATES OF AMERICA,
Petitioner,

versus

MUNSON STEAMSHIP LINE,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO CERTIORARI.

FRANK LYON,
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W. CALVIN CHESNUT,
Counsel for Respondent.

The Daily Record Co. Print, Baltimore.

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I.

WHAT WAS DECIDED IN THE COURTS BELOW.

The question in the case was whether the Munson Steamship Line (admittedly an independent carrier by water not operated under any common management or control with any rail carrier) was nevertheless subject to the Interstate Commerce Act (U. S. C. A. Title 49, Sec. 1 [1]) and was, therefore, required on its own initiative to file with the Commission schedules of its rates and fares; by reason of the *alleged fact* that its water line (from Baltimore to Florida ports) was used under a *common arrangement* for a continuous carriage or shipment of goods by railroads to Baltimore and thence to Florida ports (R., p. 3). Respondent's answer categorically and also circumstantially denied this allegation of fact (R., pp. 10, 11).

The irreducible minimum of the Government's case was, therefore, *proof of this fact.* Both the District Court in the first instance and the Circuit Court of Appeals for the Fourth Circuit on appeal decided that the Government had failed to produce evidence to prove the fact alleged. What was decided in the lower courts was, therefore, that there was a failure of proof by the Government and the case did not turn on any unusual construction or novel application of the statute. The opinion of the District Court and Circuit Court of Appeals are officially reported respectively in 33 F. (2d) 211, and 37 F. (2d) 681.

As the case involved essentially an appreciation of the evidence, there would seem to be no sufficient reason within the rule observed to warrant certiorari.

Houston Oil Co. vs. Goodrich, 245 U. S. 440.

See also

St. L. & O'Fallon R. R. vs. U. S., 279 U. S. 461, 483.

The present contention of the Government in seeking certiorari goes no further with reference to the effect of the facts of the case than to contend that there was sufficient evidence to *support* a finding that there was a "common arrangement," or as elsewhere expressed, that under the facts it was possible to *infer* the arrangement. It is to be noted, however, from the Record that, while the Government's case consisted merely of the introduction of various transportation papers from which it sought to support an inference as to a common arrangement, the respondent by full, affirmative and detailed testimony showed definitely and positively what its business customs and practice were, thus leaving no reason-

able ground for any inference as to the ultimate facts and affirmatively showing by both documentary and oral testimony of responsible executives that there was in fact no arrangement of any kind, express or implied, between the respondent as a water carrier and the railroads for a continuous shipment. As the testimony is clear and positive, and not ambiguous or uncertain, there is no need for speculation or inference in the light of positive proof.

The facts regarding the transportation practice as found by both courts successively are stated succinctly and comprehensively by the Circuit Court of Appeals (R., pp. 194-196). It would unduly prolong this brief to repeat here the facts so found but as showing the complete independence of water carriage by the respondent we call particular attention to the following uncontradicted proof:

1. There was no through bill of lading in any form.
2. There was no single or joint rate but two separate rates independently fixed by the rail and water carriers respectively.
3. There was no agreement between the carriers either express or implied.
4. There was no basis of division of a single rate.
5. There was in every case a separate marine bill of lading issued by respondent to its shipper.
6. And in every case the *destination* in the rail bill of lading was Baltimore, and the rail carriage and the responsibility of the rail carrier in any relation to the shipment was terminated at Baltimore and the water carrier never transported the goods ex-

cept after receipt of specific instructions for carriage from the shipper.

7. And in any case the shipper was at liberty to vary or change his original intention as indicated by memorandum on the rail bill of lading (to which the respondent was in no way a party). The fact is clear and uncontradicted that this notation (in the descriptive portion of the rail bill of lading) was put there for the convenience of the rail carrier to determine at which of its several piers delivery is to be made in Baltimore (R., 68, 196, 201).

8. The receipt of the goods in Baltimore by the respondent was as agent for and subject to the instructions of the shipper and not by arrangement with the rail carrier for further continuous shipment.

We emphasize, therefore, that what was decided below was that the Government had failed to prove any arrangement of any kind between the two carriers, and that this was the controlling point in the case, and not any new construction or application of the statute involved.

II.

NO SUFFICIENT REASON FOR GRANTING CERTIORARI.

(a) *The Case Was Decided On Its Particular Facts.*

As the case turned upon the failure of proof in this case rather than upon some particular construction of the statute of general application, there would seem to be no considerations of public importance to warrant certiorari. It is to be noted that the Government proceeded under Section 20 (9) of the Interstate Commerce Act, asking for a mandamus. The case was tried to a

jury. The Government's contention is that the facts would have supported a finding of the existence of the common arrangement *if the jury had so found.* The Government's brief does not maintain that the jury must have so found or could only reasonably have so found under the facts. It is submitted that the finding of a particular jury on the particular facts of this particular case one way or the other would not be a controlling precedent nor would it establish a general principle applicable to other cases differing substantially or even slightly in their particular facts.

(b) *The Commission Passed No Order in the Case.*

Furthermore, it is to be noted that the Commission itself *passed no order in this case* against the respondent. The Government's petition recites that the proceeding is brought at the request of the Interstate Commerce Commission. Nevertheless, the Commission has not itself passed any order against the respondent. It is not surprising that the Commission has pased no order against the respondent in this matter because to have done so would seemingly have been quite inconsistent with uniform prior decisions of the Commission applicable to its own jurisdiction over water carriers engaged in merely "port to port" business as in this case. See *Luckenbach SS. Co. Inc. vs. Southern Ry. Co.,* 157 I. C. C. 752 (decided by the Commission since the institution of this proceeding). And for prior decisions of the Commission denying its jurisdiction in cases of similar water transportation see also—

Corona Coal Co. vs. Secretary of War, 69 I. C. C. 389.

Transcontinental Commodity Rates, 32 I. C. C. 449.

Wool Rates Investigation, 1923, 91 I. C. C. 235, 275.
Rail and Water Rates, 63 I. C. C. 267.
In the Matter of Jurisdiction over Water Carriers, 15 I. C. C. 205.

A very recent opinion by Examiner Hurley of the Interstate Commerce Commission in the case of *Baltimore Association of Commerce vs. American Hawaiian SS. Co.,* No. 20306 I. C. C., is, as shown in the opinion of the Circuit Court of Appeals, interesting in its application by the Examiner of his understanding of the Commission's jurisdiction over transportation by water carriers under almost precisely similar circumstances to those in this case. From these decisions of the Commission it would seem entirely clear that the Commission has decided time and again that under the statute it has no jurisdiction over a water carrier with respect to the kind of transportation here involved *under the Interstate Commerce Act.*

The lack of jurisdiction by the Interstate Commerce Commission over independent water carriers does not, however, mean that they are not subject to public supervision because by the express Act of Congress even independent water carriers are subject to the United States Shipping Board and are required to file schedules of maximum rates with that Board (46 U. S. C. A. 817). This respondent has fully complied with that Act.

(c) *But the Commission Could Have Passed an Order Under the Panama Canal Act.*

Furthermore, while we contend it is quite clear that the respondent is not obligated on its own initiative to file its schedule of rates with the Interstate Commerce Com-

mission under Section 6 of the Act, nevertheless, a later Act of Congress known as the Panama Canal Act of 1912 (Section 6, paragraph 13 of the Transportation Act, U. S. C. A. Title 49) does apparently authorize the Commission, by order, after notice and hearing, on its own initiative, to establish through routes and maximum joint rates over rail and water lines. As to this, the Circuit Court of Appeals noted (37 Fed. (2) 683):

> "It is true that under the Panama Canal Act of August 24, 1912 (37 Stats. 560, 568, 49 U. S. C. A. 6 [13]) the Commission is given jurisdiction to establish through routes and maximum joint rates over rail and water lines, *United States vs. N. Y. Cent. RR.*, 272 U. S. 457; *Chicago, R. I. & P. Ry. vs. United States*, 274 U. S. 29; but it has not here attempted to exercise the power conferred by that Act and we may accordingly dismiss it from consideration."

We see, therefore, that if the facts justify it and the public interest demands it the Commission now has power to take the initiative in this matter and pass such orders with respect to through routes and maximum rates to be observed by rail and water carriers as the public interest may demand. *And as the Commission has not in its discretion deemed it wise or in the public interest to establish such through routes,* there would seem to be no public interest deeply involved in requiring the water carriers to themselves take the initiative in making arrangements with rail carriers for through routes and filing rates therefor. *And there would seem also to be no such public or general interest as would warrant certiorari in this case to review the decision on the facts by two successive courts to the effect that this respondent has in fact not made any common arrangement with the rail carrier for such through route.*

III.

THE JUDGMENT SOUGHT TO BE REVIEWED WAS PLAINLY CORRECT.

(a) *The Circuit Court of Appeals properly held Baer Bros. vs. Denver & Rio Grande R. R., 233 U. S. 479, Inapplicable.*

As a reason for granting certiorari, the Government contends that the Circuit Court of Appeals failed to give proper consideration to the decision of this Court in *Baer Bros. vs. Denver & Rio Grande R. R.*, 233 U. S. 479. That case, and others relied on below by the Government, were considered and properly held inapplicable. In all thoses cases the question was whether a shipment was *interstate or intrastate*, not whether an interstate shipment was made under a "common arrangement" [R. 203, 205. 37 F (2d) 687]. When (as in the *Baer* case and others cited) only rail carriers are involved, since the Hepburn Act (1906) a "common arrangement" is immaterial.

Assuming (for sake of argument only) that the facts incidentally called a "common arrangement" in the *Baer* case would constitute a "common arrangement" within the issue in the instant case, it is sufficient that in the instant case (as both courts below have found) the facts so characterized in the *Baer* case are lacking. The *Baer* case involved carload shipments from St. Louis, Missouri, to Leadville, Colorado, by the Missouri Pacific to Pueblo, Colorado, and by the Denver & Rio Grande from Pueblo to Leadville. The Missouri Pacific acknowledged receipt of the shipments "to be delivered to the Baer Bros. Company at Leadville, Colorado, via the Denver &

Rio Grande." No through bill of lading was issued. Each shipment was waybilled to Pueblo. The car was then delivered to the Rio Grande with an expense bill disclosing the charges paid by or due to the Missouri Pacific, and was forwarded to Leadville by the Denver & Rio Grande, which named the Missouri Pacific as consignor. "Whether collected in advance at St. Louis or at destination in Leadville, *the freight was always divided between the two companies* according to their local rates * * *." (Italics supplied.) [233 U. S. 480.] On these facts this Court said:

> "That there was a common arrangement between the two carriers here was shown by the long-continued course in dealing, and *the division of the freight, with the knowledge that it had been paid as compensation for the single haul.*" (Italics supplied.) [233 U. S. 491.]

In the instant case "there is *no* agreement between defendant and the rail carriers for the division of the aggregate of the separate rail and water rates, or any *customary or conventional division thereof.* * * * Defendant receives the freight at Baltimore as agent of shipper and pays the rail charges. It then issues a bill of lading to the shipper covering the water transportation. Upon delivery in Florida, it collects from the consignee its own charges as well as the rail charges which it has advanced; but the latter are collected, not as agent for, or under any agreement with, the rail carrier, but because they have been advanced as an incident to the contract between defendant and the shipper." (Italics supplied.) [R. 194, 37 F (2d) 681-682.]

In a word, this Court in the *Baer* case said that certain specific facts showed a "common arrangement"; in the instant case *those* facts are lacking, and both courts be-

low hold that *different* facts do *not* show a "common arrangement." Certiorari would not furnish this Court opportunity to correct a misapplication of the *Baer* case, but only to review and reappraise all the facts, as to which the Interstate Commerce Commission has not seen fit to exercise its own jurisdiction and express its "informed judgment," but which have been appraised by the concurrent judgments of both courts below,—judgments in accord with the Commission's decisions on very similar facts.

(b). *Both Courts Properly Construed and Applied the Statute.*

The meaning of "common arrangement" as used in the statute is not ambiguous or uncertain. It plainly means an arrangement *between the rail and water carriers.* Equally plainly it would *not* be gratified by an arrangement only between the *shipper and either carrier.* The language of the Interstate Commerce Act, section 1, paragraph 1 is as follows:

> "That the provisions of this Act shall apply to common carriers engaged in—
>
> (a) the transportation of passengers or property wholly by railroad or partly by railroad and partly by water *when both are used* under a *common* control, management, or arrangement for a continuous carriage or shipment;" (our italics).

The context and the phraseology and the subject matter obviously import an arrangement between the carriers whereby for the purposes of the particular transportation *both are used* under a common arrangement for a continuous carriage or shipment. That is to say, *pro hac vice,* both must be used as one for a common enterprise.

It seems unnecesary in a case so plain on the facts as this one to explore very deeply the history and economic and public reasons for the passage of the act in this form. The opinion of the Circuit Court of Appeals, however, does, we submit, correctly state the controlling public considerations for the inclusion of water carriers at all within the scope of the Act. The inclusion of water carriers was incidental only to the much fuller control over rail carriers. The contemporaneous reasons for this were succinctly stated by Chairman Knapp of the Interstate Commerce Commission (later a United States Circuit Judge assigned to the Fourth Circuit) in the Commission case entitled *In the Matter of Jurisdiction over Water Carriers,* 15 I. C. C. at 207. See quotation from that Commission case in the opinion of the Circuit Court of Appeals R., p. 197, 37 Fed. (2) 683). The section in practically the same phraseology (for water carriers) has been in force for over forty years and its purpose and meaning has been commonly understood and uniformly expressed in many judicial decisions both federal and state and by text writers of note and standing writing on the subject. For instance, see *Roberts on Federal Liabilities of Carriers,* (2d Ed. 1929) sections 114, 116; *Moore on Interstate Commerce,* Sec. 45, Rail and Water Traffic; *Barnes on Interstate Transportation,* 2nd Ed. Secs. 48, 57; *Drinker on Interstate Commerce Act,* Sec. 42, Rail and Water Traffic.

The Government's petition for certiorari, page 6, states that this Court has never passed upon the question of whether the "common arrangement" of the statute applies to facts therein stated to be the facts of this case. We cannot assent to the entire correctness of the facts as there stated and would refer to the facts as stated by

the Circuit Court of Appeals (R., pp. 194 to 196, 37 Fed. (2) 681-3). Particularly we dispute the alleged fact (which incidentally is several times repeated in the Government's petition and brief) that the transportation practice here involved "requires no intervention by the shipper from the time the goods are delivered to the initial carrier until delivery by connecting water carrier at ultimate destination." The facts found by the two courts in succession expressly include the fact that the goods when delivered in Baltimore are forwarded by the respondent only pursuant, in every ase, to express and specific instructions from the shipper separately given to the *respondent by the shipper*.

Nor do we assent to the statement of the facts made in the Government's petition (page 6) in relation to the alleged cooperation of the initial carrier with the respondent. The facts of the case plainly show that the notations in the rail carrier's bill of lading are made at the instance of the rail carrier *for its own convenience in making delivery in Baltimore*. Nor does the statement of the case as made in the Government's petition include the important fact that movement over the lines of the water carrier is in every case governed entirely and completely by its *own bill of lading* separately issued to the shipper by the respondent.

That this Court has not heretofore had before it a case involving the particular facts of the instant case is unimportant as a reason for certiorari, especially since the principles governing the application of the statute to the facts of other cases have been heretofore passed upon both by this Court and frequently by the inferior federal courts. The construction and application of the statute, as made by the lower courts in the instant case is not inconsistent with or different from the effect of former de-

cisions of this court and other federal courts. Particularly the decision in this case is in nowise inconsistent with but entirely in conformity to the principles announced in *C. N. O. and T. P. Ry. vs. Interstate Commerce Commission*, 162 U. S. 184, 192, 193, the Social Circle case. See also other federal cases, including cases in this court, considered by the Circuit Court of Appeals (R., p. 200, 37 F. (2) 685) from which the conclusion drawn by the Court is correctly stated as follows:

> "And we think that no case can be found holding that a common arrangement existed within the meaning of the Act where there was no such 'continuous line' created either by through billing or conventional division of rates."

While, as said by this Court in the Social Circle case, it may be that a common arrangement could be shown from the existence of other facts, yet as a practical matter it seems no such other case has ever arisen—as might be expected from the consideration that unless there is a through billing (with its obvious advantages to the shipper) or a conventional division of rates by the carriers, there is no business incentive to the carriers to make a common arrangement for a continuous shipment.

It is not entirely clear to us what other or different definition or meaning the Government's brief contends for with respect to the phrase "common arrangement" as a matter of principle or of general application. The most concrete expression of the Government's contention for a different construction or application of "common arrangement" than was given by the lower court (consistently with numerous prior federal decisions), would seem to be at the bottom of page 18 in which it is said:

> "The successive receipt and forwarding of freight in interstate commerce by two or more connecting carriers under any arrangement by which they mutually facilitate continuous shipments over their lines in the same way as freight is transported on through bills of lading is, it is believed, evidence of a common arrangement within the meaning of the statute."

If this is intended to be formulated as a definition of the "common arrangement" of the statute it is obviously much too broad and goes far beyond the obvious context of the statute and the principles of adjudicated cases. As applied to the instant case, even if the situation as put should be *some* evidence of a common arrangement, it is not such controlling evidence as would overcome the full and affirmative evidence in this case to the contrary; and would, we submit, under all the testimony in the case, not be sufficient to support a jury finding of the existence of "common arrangement." Nor is the proposition as formulated applicable to the facts of this case, in which two successive courts have found that there was *no* arrangement between the two carriers. The *only* circumstance in this case which the Government can advance in support of the suggestion of mutual facilitation by the carriers for continuous shipments is in the notation already referred to in the rail bill of lading which, as has already been clearly pointed out in the decisions of both courts, was for the convenience of the rail carrier in making delivery. Nor would an arrangement between the carriers for their mutual convenience in making and accepting delivery of merchandise at the end of the rail carriage and the beginning of the water carriage constitute a condition under which both the rail and water carrier are used under a common arrangement for a continuous carriage which necessarily involves something that, in the way of an arrangement, management or con-

trol, is common to both carriers throughout the whole of the one journey—in other words, such a situation as necessarily exists when there is a through bill of lading or a conventional agreement for division of entire charge by separate carriers. As to this narrow issue Judge Noyes for the second Circuit Court of Appeals in *Mutual Transit Company vs. United States*, 178 Fed. 664, well said:

> "The phrase 'common arrangement' in view of its context, evidently means an agreement or understanding between connecting carriers with respect to the transportation of merchandise and the charges to be made therefor. A mere agreement by an independent water carrier to accept freight from a connecting railroad and to transport it for its own particular rate might be an 'arrangement' for continuous carriage but would not be a 'common arrangement'."

It is, we submit, too plain for further argument that under the facts in this case there was in the legal sense neither a continuous carriage nor a common arrangement by the carriers therefor. Each carriage was under a separate bill of lading. The rail carriage began at some inland point and terminated absolutely with respect to compensation and liability at Baltimore. The water carriage moved from Baltimore under a separate marine bill of lading which itself defined the compensation to be earned by the carrier and the liability for the carriage for the whole of the water journey. Instead of there being either expressly or impliedly an agreement for one continuous carriage there was clearly, as a matter of law, two separate contracts for separate stages of the transportation. The journey was not one connected chain of unbroken links even though necessarily in the physical sense two of the separate links had point of contact in Baltimore.

We, therefore, submit that this application for certiorari should be denied because—

(a) The decision was based upon the particular facts and the failure of the Government's proof rather than upon any particular construction or application of the statute, and

(b) The case was plainly rightly decided below, and

(c) No prior decisions of this Court have been misunderstood or misapplied.

There being no conflict of decisions and the case having been decided essentially on its particular facts, it would seem not to involve a question of importance requiring further litigation in the public interest.

Magnum vs. Coty, 262 U. S. 159, 163.

Respectfully submitted,

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Office Supreme Court, U. S.
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Supreme Court of the United States

OCTOBER TERM, 1930

No. 85

THE UNITED STATES OF AMERICA, PETITIONER

vs.

MUNSON STEAMSHIP LINE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENT

FRANK LYON,
IRVING L. EVANS,
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BRIEF FOR RESPONDENT

OPINIONS BELOW

The opinion of the District Court (Record, pp. 17, 112) is reported in 33 Fed. (2d) 211, and the opinion of the Circuit Court of Appeals (Record, p. 194) is reported in 37 Fed. (2d) 681.

JURISDICTION

The jurisdiction of this Court rests on Section 240(a) of the Judicial Code (U. S. C. 347). Some comments as to the jurisdiction of the District Court are submitted below, but this jurisdiction is not disputed by the Respondent.

THE QUESTION

The question in this case is this:

Is the Munson Line, an independent common carrier by water, required to file, "schedules and tariffs of rates and charges under Section 6 (1) of the Interstate Commerce Act (U. S. C. Title 49, Sec. 6, paragraph 1)," for goods carried by water from Baltimore to Florida ports under its own independent marine bill of lading but received by it (as agent for the owner) from rail carriers to Baltimore under their bills of lading with destination at Baltimore?

Section 6 (1) of the Interstate Commerce Act applies only to "every common carrier subject to the provisions of this Act". The ultimate question, therefore, depends upon the construction and application of Section 1, paragraph 1, of the Interstate Commerce Act (U. S. C., Title 49, Section 1, paragraph 1), reading as follows:

> "1. *Carriers subject to regulation.* The provisions of this chapter shall apply to common carriers engaged in—
>
> (a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment."

The Government contends and the Respondent denies that there is a "common arrangement" within the sense of the statute between the rail and water

carrier. Both the lower Courts have found the fact in favor of the Respondent.

With relation to the dominant facts of the case, the question presented may be stated as follows:

Is there a "common arrangement" between the rail and water carrier when—

(1) There is no through bill of lading; no joint or other through or entire rate; no conventional or other division of freight rates; and no contract or agreement whatever, express or implied, between the rail and water carrier with respect to the shipment; and when,

(2) The rail and water carriages constitute separate and distinct contracts, each made directly by the shipper with the carrier, each evidenced and governed solely by the rail and marine bill of lading, issued by the respective carriers directly to the shipper, each bill stating its own freight charge in which the other carrier is in nowise interested, the destination of the goods in the rail bill being Baltimore; and the consignee named therein being the shipper at Baltimore, or the Respondent as agent for the shipper, or the shipper in care of the Respondent.

Merely because—

(3) In the rail bill the shipper makes notation in the space allotted for descriptive marks regarding the goods carried (upon the suggestion of the rail and/or the water carrier—called "cooperation" in the Government's brief), of the name and address of the intended ultimate consignee; but

(4) Such notation on the rail bill is not effective to accomplish further carriage by water from Baltimore without express direct instructions from the shipper to the water carrier in the case of each shipment, although it does facilitate the interchange of the goods at Baltimore by indicating to the rail carrier the convenient particular place of delivery in Baltimore.

The case does *not* involve—

(a) any question of rates—in any form;

(b) the power of the Interstate Commerce Commission to establish joint rail and water rates affecting the commerce involved, under the Panama Canal Act, or otherwise—for the Commission has passed no order of any kind affecting the Respondent;

(c) Any question as to what constitutes interstate commerce;

(d) the immunity of the Respondent from Governmental regulation—for the Respondent is admittedly subject to the Shipping Act and has fully complied therewith by filing maximum rates with the Shipping Board, and otherwise.

The practice and course of business of the Munson Line with respect to this class of transportation does not differ from similar transportation by other water carriers, and there is no novelty in the practice and course of business, which has been in vogue for many years. It has been the common understanding of water carriers (also expressed in decisions of the In-

terstate Commerce Commission and in Federal decisions) that with respect to this class of transportation they are not subject to the provisions of the Interstate Commerce Act.

The case is, therefore, in the nature of a test case, and, if the Government's position is sustained there will necessarily be a revolutionary change affecting this class of water transportation.

The Government's brief, in the statement of the "Question Presented", *assumes* (incorrectly, we submit) that it may be found from the facts of the case that the water traffic involved is "a part of a *continuous shipment not requiring any intervention* by the shipper from the time the goods are delivered to the initial carrier to the time when the water carrier delivers them at destination and when the railroads connecting with the water carrier *co-operate with it* in informing shippers as to notations on the railroad bills of lading *which make possible* such through shipment.". (Italics supplied.)

We dispute the assumption of fact that a continuous or through shipment is made possible by cooperation between the rail and water carrier without requiring intervention by the shipper to effect the water carriage. On the contrary, we maintain (1) that this assumption is not consistent with the findings of fact as made by the lower Courts in this case, and (2) that the facts of the case show that the so-called "coopera-

tion" of the rail carrier is with the shipper rather than with the water carrier, and (3) that the activities of the rail carrier, called "cooperation", do not make possible the continuation of the transportation by water from the port. On the contrary, this is accomplished only by orders from the shipper directly to the water carrier, after the rail carriage has terminated at the port. This is discussed more fully hereinafter in the argument, and particularly in Section C under the caption "Answering the Government's Present Contention".

But even if the Government's assumptions of fact could be supported by the evidence, we also dispute the legal contention that so-called "cooperation" (a loose and indefinite term) can be substituted for the statutory requirement of a "common arrangement" between the carriers. When traffic is "partly by railroad and partly by water", the water carrier is not subject to the Act, unless—

> "both are used under a common control, management, or arrangement for a continuous carriage or shipment."

It is conceded that the Respondent is an independent water carrier not under common control or management with any railroad line. Therefore, the irreducible minimum for the Government to show in this case is that the rail and water carriage are both used under a "common arrangement" for a continuous carriage or shipment.

It is clearly established by the decisions hereinafter referred to that a common arrangement does not exist unless there is some agreement between the rail and water carriers relating to the continuous carriage or entire transportation. The agreement may be either express or implied. It is conceded there is no express agreement in this case. And in the absence of a common control or management the nature of the subject matter is such that a common arrangement can be implied only from circumstances which show some *community of interest* between the carriers with respect to the use of both their lines for a continuous carriage. The decisions hold that the implication may be found from transportation under a through bill of lading or from some conventional division of one entire charge for the whole transportation. While it is not contended that a common arrangement might not possibly be otherwise manifested, yet no case has ever arisen where the common arrangement has been implied from other circumstances. This is naturally so because it is hard to conceive, from the nature of the subject matter, the existence of a community of interest in the entire journey on the part of two carriers not based on a division of freight earned for the entire journey. The only consideration to the carriers for transportation service is their freight charges. And if the carriers are truly independent of each other and not subject to any common control or management it is difficult to conceive the circumstances which would give them a community of interest in the continuous

shipment, unless there is some agreement between them as to the division of the freight charges.

We understand it is not now contended by the Government that there was in this case a through bill of lading or any agreement between the carriers for division of freight charges. And as we understand the statement of the question as presented by the Government, it excludes the necessity of finding the existence of any agreement between the carriers creating a community of interest between them. In lieu of such an agreement the Government contends a common arrangement may be found merely from alleged "cooperation". The term "cooperation" is itself too loose and indefinite in meaning to have any precise significance. To give it definition, resort must necessarily be had to the facts of the case, which show that what is referred to is merely a descriptive memorandum made on the rail bill of lading by the shipper by suggestion from the rail carrier, the effect of which is to facilitate the place of delivery of the goods at the port, but the memorandum does not itself make effective further transportation by water. Such cooperation clearly does not establish any community of interest, or other common arrangement between the carriers for a continuous shipment.

STATEMENT OF THE CASE

The case began with the filing by the United States of a petition for mandamus against the Munson Steamship Line in the District Court of the United

States for the District of Maryland. Prayers of the petition were that the Munson Line should be required

"(a) To comply with the provisions of said Act to regulate commerce, as amended, particularly with respect to the filing of schedules and tariffs of rates and charges as required by Section 6 of said Act;

(b) To cease and desist from engaging and participating in the transportation of property, for hire, in interstate commerce, partly by railroad and partly by water, under a common arrangement for continuous carriage and shipment, unless and until said Respondent has filed with said Commission as aforesaid, its schedules and tariffs of rates and charges and has otherwise complied with the provisions of said Section 6 of said Act, as amended, with respect to the filing of said schedules and tariffs". (Record, p. 8.)

The most material averment in the petition, alleges that the Respondent, the Munson Steamship Line, does—

> "in conjunction with other common carriers * * * maintain and operate certain *through routes* and did and still does transport thereover shipments of property for hire, in interstate commerce, partly by railroad and partly by water, *under a common arrangement for continuous carriage and shipment,* as hereinafter more fully described; and throughout said period said Re-

spondent and the other common carriers above mentioned were, and still are, subject to the provisions of the Act of Congress approved February 4, 1887, entitled 'An Act to Regulate Commerce' and to the Acts of Congress amendatory thereof and supplementary thereto." (Record, p. 3.) (Italics supplied.)

The answer of the Respondent (Record, p. 10) categorically and circumstantially denied that with respect to the commerce mentioned it has ever, in conjunction with other common carriers by rail, transported property under a "common arrangement for continuous carriage and shipment", as alleged or otherwise.

The *issue in the case*, therefore, is one of fact—whether the transportation involved is conducted under "a common arrangement for continuous carriage and shipment", between the rail and water carriers.

After a trial of this issue on the pleadings and testimony before a jury (in accordance with the Maryland practice and the Conformity Act), the District Judge (Judge William C. Coleman) instructed a verdict for the Respondent on the ground in substance that on the uncontradicted evidence there was no "common arrangement" as alleged. (Record, pp. 112 to 117); 33 Fed. Rep. (2d) 211.

On appeal the judgment of the District Court was affirmed by the United States Circuit Court of Ap-

peals for the Fourth Circuit; opinion by Judge Parker. See 37 Fed. (2d) 681.

On petition of the United States this Court granted certiorari. (281 U. S. 715.)

JURISDICTION OF THE DISTRICT COURT

The District Court has no general jurisdiction in mandamus cases, but the petition of the Government was based on Section 20, paragraph 9, of the Interstate Commerce Act (49 U. S. C., Section 20, paragraph 9), which reads as follows:

> "*Jurisdiction to compel compliance by mandamus.* The District Courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of this chapter or any statutes supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of this chapter and said statutes or any of them."

Exercise of jurisdiction under this Section in Interstate Commerce matters, without prior order of the Interstate Commerce Commission, seems to have been rare and District Judge Coleman at the trial expressed some doubts as to the jurisdiction of the Court but after further consideration decided that the Court had jurisdiction on authority of *United States vs. Union Stock Yards*, 226 U. S. 286.

Other instances of the exercise of jurisdiction in similar matters may be found in cases of *Interstate Commerce Commission vs. Bellaire, Z. & C. Ry. Co.* (Circuit Court, S. D. Ohio, E. D. January 11, 1897), 77 Fed. Rep. 942; and *United States ex rel. Interstate Commerce Commission vs. Chicago K. & S. R. Co.* (Circuit Court W. D. Mich. S. D. June 23, 1897), 81 Fed. 783.

THE PANAMA CANAL ACT

It is also to be noted that although the Interstate Commerce Commission itself has jurisdiction and power under proper procedure to establish through routes and maximum joint rates for the class of transportation herein comprehended by authority of what is known as the Panama Canal Act of 1912 (See Section 6, paragraph 13, of U. S. C., Title 49), it is obvious that this proceeding is not based on that Act as now codified, because it is admitted that the Commission has in fact not established any such through route or maximum or other rates for this class of transportation. See *Chicago, R. I. and P. R. R. Co. vs. United States,* 274 U. S. 29; *U. S. vs. N. Y. Cent. R. R.,* 272 U. S. 457.

The contention of the Government in this case is that irrespective of any order or action by the Commission with respect to this class of water transportation it is nevertheless *affirmatively the duty of the Munson Line on its own initiative* to file its schedules and rates with the Interstate Commerce Commission.

The Government's brief in the Court of Appeals referred at length to this Panama Canal Act as having

broadened the Commission's control and increased its regulatory power over rail and water carriers. While it was conceded by the Government that the existence of this statute does not dispense in this case with the necessity of proof by the Government of a "common arrangement" between the rail and water carriers, nevertheless it was argued that this enlargement of jurisdiction is very significant and should be considered in construing the jurisdictional clause in Section 1 of the Act. We submit this is not sound.

The argument seems to be that water carriers not subject to the Act by reason of the limitations in Section 1 may in some way nevertheless become subject to the Act, otherwise than by action by the Commission under the Panama Canal Act. Or in other words, as we understand the argument, it is in substance that the passage of the Panama Canal Act in 1912 has in some way expanded or amended the jurisdictional clause in Section 1 of the Act. This is not an admissible or proper rule of statutory construction. The Panama Canal Act does not undertake to and clearly does not expand the scope of Section 1 of the Act; although it does give new and additional powers to the Commission within the limitations of that special Act. Whether or not the Commission should act in any given case by the exercise of its powers under that Act is obviously a matter in the discretion of the Commission. Assuming that the Commission could properly act under the Panama Canal Act in establishing joint

or other rates for the class of water traffic embraced in this case, it is conceded that the Commission has not done so. As applied to this case the proper argument or inference from the existence of this unexercised power would seem to be directly contrary to that deduced by the Government. If the public interest requires that the class of water traffic here involved should be subjected to control by the Commission, then it is for the Commission in its discretion to act after proper notice and hearing by appropriate order. The failure of the Commission to so act would seem to imply that the public interest does not so require.

THE FACTS

A succinct statement of the controlling facts affecting the class of transportation in this case as found by the District Court and the Circuit Court of Appeals has been made by Judge Parker for the Circuit Court of Appeals (see Record, pp. 194 to 197), 37 Fed. (2d) 681. We are content to accept the facts as so found and stated by the two lower Courts as the basis for further discussion of the law applicable to the case; and on that basis it would be unnecessary to review the record for the facts in more detail. But the question for decision as stated in the Government's brief (p. 2) assumes facts in the case disputed by us and in our view not consistent with the facts as found by the lower Courts. For this reason only, and in support of the findings as so made by the lower Courts, we now refer in detail to the testimony in the Record.

As we have said, the Government's petition alleges that the Respondent with other common carriers maintains and operates "through routes" partly by rail and partly by water under a "common arrangement for a continuous carriage." The petition sets out a particular shipment as illustrative of the transportation practice alleged. However, the course of business is not in all respects fully and accurately stated in the Government's petition, but is correctly and fully set out in the Respondent's answer (Record, pp. 10 to 15). For convenience we summarize the applicable portion of the answer (which was fully and affirmatively supported by the testimony in the case without any real contradiction). It is as follows (Record, pp. 11, 12):

> "the shipper delivers merchandise to a rail carrier for transportation to Baltimore and for delivery to this respondent as agent of the shipper. The rail carrier to Baltimore issues its bill of lading to the shipper showing the destination of the shipment to be Baltimore, Maryland; in due course of transportation the merchandise is delivered to this Respondent as agent of the shipper, the bill of lading is surrendered to the rail carrier, the charges or freight of the rail carrier are paid by this Respondent as agent of and for account of the shipper, this Respondent then issues its bill of lading to the shipper for carriage of the goods by water from Baltimore, Md., to the point of destination. This Respondent was in this case and is in similar cases in-

structed by the shipper what disposition to make of the goods received for his account and the bill of lading issued by this Respondent is in accordance therewith. The freight rate for transportation of the goods by rail to Baltimore is in all cases fixed and determined by the bill of lading issued by the rail carrier and the same is in all cases paid by this Respondent only at the request and as agent for the shipper to the rail carrier upon presentation of bills for the freight from said rail carrier and there is no other contract in writing or otherwise, expressed or implied, existing between the shipper and/or this Respondent with the rail carrier than that shown in the rail carrier's bill of lading. The transaction is neither in form nor in substance an arrangement or contract or agreement between the shipper on the one part and the rail carrier and this Respondent jointly on the other for a 'through' shipment by rail and water to a point of ultimate destination, but consists of two entirely separate contracts of carriage, one made by the shipper with the rail carrier for carriage to Baltimore, only[,] where it terminates absolutely (and to which the Respondent as a carrier is not a party), and the other a contract of water carriage between the shipper and this Respondent only (not affected in any way by the former contract of carriage with the rail carrier), to which the rail carrier is not a party and with which the latter has no concern whatever. And there is no agreement whatever between the rail carrier and this Respondent as to time or terms of further

carriage, or rate of charge therefor, by this Respondent, or any arrangement or understanding between them as to division of total charge to the shipper, nor as to any time or contingency as to payment of the rail carrier's charge."

The Government's case was apparently wholly based on the inferences which it sought to raise from its construction of the legal effect of certain transportation documents issued in five separate shipments selected by the Government from the Respondent's records, supplemented in part by files of the railroad carriers. By agreement of counsel, however, there were also introduced by the Government other papers pertaining to the same shipments voluntarily supplied from the files of the Respondent and for the purpose of showing the full course of the transportation practice. These documents were offered in evidence by the Government as its case and are contained in the Record, pages 119 to 183, inclusive. In all or most of the several illustrative shipments the papers consist of the following:

1. Shipping order or bill of lading issued by the rail carrier to the shipper at some inland point.

2. A waybill accompanying the shipment for railroad carrier's employes.

3. Freight bill prepared by the rail carrier and rendered to the Respondent at Baltimore for the freight due the rail carrier.

4. A letter from the Respondent to the rail carrier with check in payment of the freight bill.

5. A letter of instructions from the shipper addressed to the Respondent at Baltimore directing disposition of the shipment.

6. A marine or ocean bill of lading issued by the Respondent to the shipper.

The only evidence offered by the Government in addition to these documents was the testimony of *White*, an agent of the Baltimore and Ohio Railroad at Locust Point, who described the physical operations involved in the delivery of goods from the railroad cars at Locust Point, the terminal of the rail carrier, to the ships of the Respondent; and also the testimony of *Sweeney*, general traffic manager of the Merchants and Miners Transportation Company (a carrier by water from Baltimore), who testified that his company did file with the Interstate Commerce Commission a schedule of tariffs showing rates to Florida points, carried by rail to Baltimore and by water to Florida from Baltimore, by his company on *through bills of lading*. (In passing it may be noted that some water carriers do *at their option* make common arrangement or agreements with rail carriers for *through shipments from inland points*. And, of course, when this is done the tariff must be filed with the Interstate Commerce Commission. The making of such agreements or arrangements is, however,

optional with the water carriers and not obligatory on them.)

The Government's contention as set out in its petition and by its counsel at the trial was in substance that the transportation documents accompanying the illustrative shipments showed on their face that there was a "common arrangement" between the rail carriers and the Respondent for a continuous carriage or shipment from the inland point to the Florida point (or at least that the documents were evidence from which the jury might infer such a common arrangement). Or stated more succinctly the Government's contention was that these transportation documents, and particularly the railroad bill of lading, constituted a "through" bill of lading.

The contention of the Respondent was that (a) the documents did not constitute a through bill of lading and did not raise even a *prima facie* inference contended for by the Government, and (b) that even if there was such a *prima facie* inference it was not conclusive in fact, and (c) was destroyed by the actual facts which clearly negative any common arrangement between the rail and water carriers.

While the Respondent could, we submit, have successfully rested on the deficiencies of the Government's case without producing any testimony in its own support, nevertheless as the case was in the nature of a test one, and it was desirable to have the ques-

tion determined on the full statement of the customary practice involved, the Respondent called as witnesses the heads of the executive departments of both water and rail carriers, who were thoroughly familiar with the customs of the business and who testified explicitly and expressly what these customs were and that there was no common arrangement between the rail and water carriers as to this class of transportation. The record, therefore, clearly and fully presents a picture of the transportation practice involved. In brief, it fully supports the summarized statement above quoted from the Respondent's answer. The witnesses who so testified for the Respondent were Mr. *Walter P. Coria,* the Baltimore manager for the Munson Line for the last ten years, before which time he had been connected with the Merchants and Miners Transportation Company for thirty-nine years; Mr. *Frederick J. Couse,* head of the *foreign freight department* of the Baltimore and Ohio Railroad, with special charge of intercoastal and coastwise traffic. The witness had been the head of that department for fourteen years. Also Mr. *William F. Emrich,* who occupied for Baltimore a similar position with the Pennsylvania Railroad Company; and Mr. *Winfield S. Burton,* who occupied a similar position with the Western Maryland Railway Company. These three rail lines are the only ones which have terminals in Baltimore. Mr. *Edward K. Morse,* general freight traffic manager of the Munson Line

with headquarters in New York, also testified on the same subject.

From the testimony of these witnesses it also appeared, without contradiction, that the customary practice of the Munson Line with respect to coastwise traffic from Baltimore to Florida is in no way peculiar or unique and that in general the same practice is followed both for "coastwise traffic" and for "intercoastal traffic" by independent American water carriers generally. (Record, pp. 41, 61, 103.)

It also appears from the testimony of Mr. Morse that the Munson Line is an old New York corporation, a relatively large steamship line, operating generally in the neighborhood of 100 steamers. The greater part of its business is international. It has a line to South America, a number of lines to Cuba, and does a general tramp business almost anywhere. It is a stock corporation and is not owned or controlled by any railroad company or steamship company and is a really independent line. It is not affiliated with any rail carriage system such as the Morgan Line is with the Southern Pacific Railroad. (See Record, p. 102.)

"Coastwise traffic" is what is known as port to port business on the Atlantic Coast, while "intercoastal" business is port to port traffic going through the Panama Canal. The opening of the Panama Canal gave a great deal of stimulus to the volume of freight transportation to the seaboard, the reason be-

ing that the actual cost of combined rail and water transportation from inland points, as far west as Pittsburgh or even farther, to Baltimore, plus the ocean voyage through the Canal up to San Francisco is less than sending such freight by all rail across the Continent. The railroads, therefore, and particularly the Baltimore and Ohio, actively solicit transportation of freight from inland points to Baltimore destined ultimately to go on from Baltimore by water carriage to other Atlantic ports or through the Canal. And similarly but separately water carriers solicit transportation of such freight originating inland for their respective lines. (See particularly Record, p. 62.) These witnesses, and particularly Mr. Couse, being thoroughly familiar with customs of the business relating to the various transportation documents offered in evidence, testified quite fully with regard to various points under discussion in the case relating to the documents and to the course of procedure of the rail and water carriers respectively regarding the illustrative shipments and the general practice in similar transportation. All these witnesses testified explicitly and categorically that the documents *do not show a through bill of lading* in any case and that the class of business involved is never handled on a through bill of lading and that the documents relied on by the Government as tending to show a through bill of lading do not in fact do so. The customary practice of the Munson Line at Baltimore in soliciting

freight for Florida points is shown by illustrative letters set out in the Record, pages 28 to 35.

The practice of the Baltimore and Ohio Railroad in soliciting rail transportation for such business is shown in the circular issued by it (Record, pp. 63 to 66), from which it is noted that the respective shippers are informed "the Munson Steamship Line will accept freight on through bills of lading to Havana, Cuba, but *not on traffic destined to Florida*" (Record, p. 65).

Here it is convenient to note the distinction between domestic port to port business and *export* freight by water carriage for foreign ports. The Interstate Commerce Act primarily covers interstate domestic and not foreign commerce. And with respect to through bills of lading it is to be noted that Section 25, paragraph 5, of the Interstate Commerce Act (Title 49, Transportation, U. S. C., Title 49, Sec. 25 [5]), relating to "schedules and rates of water carriers in foreign commerce" provides as follows:

> "The issuance of a through bill of lading covering shipments provided herein shall not be held to constitute 'an arrangement for continuous carriage or shipment' within the meaning of this Chapter (Act of February 28, 1920, Chap. 91, Sec. 441, 41 Stat. 497)."

It is also affirmatively and expressly clear from the testimony of all these thoroughly experienced, well informed, and mostly disinterested witnesses that the

rail bill of lading is an accomplished and fully executed contract when delivery of the goods is made at Baltimore to the Respondent as agent for the shippers and that thereby *all control of the shipment by the rail carrier is terminated* and that no liability exists on it for whatever may occur to the goods thereafter; and also that there is no understanding or arrangement of any kind with regard to the carriage between the rail and water carrier and specifically no arrangement or understanding of any nature with respect to any proportional division of the *total freight* earned by rail and water carrier. On the contrary the rail carrier earns a freight which, from the point of inland origin to Baltimore, is strictly in accordance with its published tariffs on file with the Interstate Commerce Commission and has no interest or concern of any kind in the ocean freight, and the rail carrier renders the bills for its earned freight in due course of business to the Munson Line and receives payment therefor in due course without any understanding or agreement other than the regulations prescribed by the Interstate Commerce Commission for that class of freight.

A point is here to be noted with regard to the time of payment of the rail freight bills by the Respondent. In the Government's petition the allegation would seem to be that the practice was for the Munson Line to defer payment to the rail carrier of its earned freight until after collection from the consignee and

inferably only on the condition of such collection. This is denied by the answer (Record, p. 13). And the Respondent's testimony supports the answer without contradiction. That is to say, the payment by the Munson Line to the rail carriers is in no way conditioned on or dependent on prior collection from the ultimate consignee. As a matter of fact the tabulation offered in evidence (Record, p. 185) shows in all five illustrative shipments that the rail freight bill was paid by the Munson Line prior to the arrival of the goods at their Florida port of destination and prior to the collection of the freight from the ultimate consignee, or at least prior to receipt in Baltimore of freight so collected. The general practice is well stated by Mr. Couse (Record, p. 69), as follows:

> "There is no arrangement of any kind with the Munson Line regarding division of freight, or any contingent arrangement that if they cannot collect the freight, the railroad will not hold the Line liable for it. The general practice with regard to the collection of the railroad inland freight is for the Munson Line to pay the railroad charge and carry it against the shipment and collect the total from the consignee, the Railroad Company rendering its bill to the Line. The bill is rendered on the basis of the railroad full local to the port, meaning by that, the Railroad published filed rate from the shipping point or origin to Baltimore. There can be no arrangement in any particular case whereby the Munson Line pays more or less to the Railroad than the pub-

lished rate. The Railroad would not accept more or less. If it did, it would be violating the law."

There was some discussion at the trial of the case as to what are the exact applicable regulations of the Interstate Commerce Commission as to the time within which freight bills on this class of business must be rendered by the rail carrier and paid by the Munson Line as agent of the shipper or to itself as consignee. It does not clearly appear from the record just what is this applicable period of grace. Some of the witnesses seem to think that the regulation called for a payment in four days exclusive of Sundays and holidays after delivery of the goods by the rail carrier. Elsewhere the time is spoken of as within a certain time after the sailing of the particular ship. The tabulation referred to (Record, p. 185) shows some variation in time of payment with respect to number of days elapsing between receipt of freight bill by Munson Line and date of payment. If does, however, affirmatively appear that there is no unusual or special consideration shown by the railroad with respect to the Munson Line or other water carriers doing similar business but that such delay, if any, beyond the time prescribed by the regulations in the cases noted was purely accidental and caused by possible delay in ordinary office routine, there being delay sometimes in rendering the bill by the rail carrier or errors in the bill when first rendered and sometimes ordinary

delay in payment owing to the practical inability of the Munson Line to assemble and audit the bills until the day of or after the sailing of the particular ship. It is clear that the delay, if any, in particular cases is not by reason of any special indulgence arranged or agreed upon between the rail and water carrier. (See testimony Couse, Record, p. 69, Burton, p. 96 bottom, Morse, p. 105, Coria, p. 37).

It is also affirmatively clear from the testimony of the witnesses and particularly that of Mr. Coria. (Record, pp. 36, 38, and Couse, p. 80) that the Munson Line *in every case* receives *instructions from the shipper what disposition to make of his goods.* (See for illustration Record, pp. 131, 147, 159 and 183.) Each of these exhibits is a letter from the shipper to the Munson Line directly expressing the order of the shipper as to disposition of the goods by the Munson Line. Special attention is called to the exhibit, page 183, which is the order from a shipper known as the "My Own Company." The shipment therein referred to was by the rail bill of lading consigned to Van Camp Products Company, in care of Munson Line at Baltimore, Maryland. The My Own Company was the shipper. By its letter dated October 18, 1927 (Record, p. 183), it countermanded authority for the delivery of the shipment to the Van Camp Company and directed the shipment to be sent to Louis Chitty of Jacksonville, Florida. The marine bill of lading was issued accordingly (Record, p.

179). This is, of course, an illustration of Mr. Coria's testimony, not only that in every case the Munson Line requires special shipping directions from the shipper, but also that the consignee as named in the rail bill of lading is not controlling and that on the contrary the shipment remains under control of the shipper and the goods are received by the Munson Line as *agent for the shipper and subject to his orders.*

It also appears from the testimony of these witnesses that if the rail bill of lading is an "order bill of lading" it must be sent by the shipper to the Munson Line and surrendered by the Munson Line to the railroad to get the delivery of the goods. And in the case of *every shipment* the Munson Line issues its own bill of lading, sending it to the shipper or as directed by him. (See for illustration Record, pp. 127, 143, 169, 173 and 179.) Obviously the goods are subject only to the ocean bill of lading issued by the Munson Line for the water carriage. The Munson Line is in no way a party to the rail bill of lading and the rail carrier is in no way a party to the ocean bill of lading. *The rail and water carriages are, therefore, separate and independent.*

The contention of the Government (at the trial) that the transportation documents constitute a "through" bill of lading seemed to be based principally if not entirely on the notation in the rail bill of lading, in the space captioned as follows:

"Description of articles, special marks and exceptions,"

of the following legend:

"For Charles C. Fisher, Miami, Florida" (Record, p. 119).

And in another rail bill of lading in similar location is the notation—

"For forwarding to Miami, Florida" (Record, pp. 149, 161.)

It will be noted, however, that this notation does not show the *destination of the goods under the rail bill of lading*. In each case the bill of lading is to Baltimore, Maryland. The reason for the notation is clearly shown in the testimony of Mr. Couse. In the Baltimore and Ohio circular already referred to (page 65) the instruction to the shipper by the Baltimore and Ohio is as follows:

"Rail bills of lading should show name of ultimate consignee, c/o the designated steamship line, destination Locust Point, Baltimore, Md., and in the body of the bill of lading should appear notation indicating ultimate destination in Florida."

Note 1. Traffic for the Munson Line should be consigned in their care, Curtis Bay Merchandise Pier of the Baltimore and Ohio Railroad, Curtis Bay, Md.

On this point, the testimony of Mr. Couse (Record, p. 68) was:

"The effect of the notation in the box headed 'Description of Articles and Special Marks and Exceptions' is merely for information and largely for the rail carrier. The explanation of the remarks in the box is that if a shipment merely came in consigned to the Munson Line or care of the Munson Line it would have to be held out in the yard until the Baltimore and Ohio knew where it was going. By that the witness meant that the Baltimore and Ohio would have no information which would indicate whether it was going intercoastal, or to Havana, or going to Florida ports. Having this notation in the body of the bill of lading helps the railroad company to the extent of segregating that property and facilitating the delivery of it by proper classification in the Baltimore and Ohio 'hold' yard. The Railroad Company has a number of different delivery points here in Baltimore. For export business it takes the freight nearest to the pier for which it was intended of that line. The Railroad Company has approximately ten piers. The notation in the body of the bill of lading helps the Railroad to know to which of its ten piers it is most convenient to take this particular freight. In the case of the Munson Line, it is even more marked, because they load their intercoastal steamers at Curtis Bay and their coastwise steamers at Fell Street. The two are about seven miles apart, so the point to the witness' remark may be seen."

Succinctly summarized, therefore, the uncontradicted testimony shows the following:

1. No agreement or arrangement of any kind between the rail and water carrier for a through shipment.

2. No through bill of lading.

3. No through or joint rate.

4. No agreement between the carriers for the division of the aggregate of the separate rail and water rates.

5. No agreement as to time or contingency of payment by water carrier of rail rate.

6. *Affirmatively* in every case instructions from the shipper to the Munson Line what disposition to make of shipment.

7. In every case issuance by Munson Line to shipper of its own marine bill of lading.

8. Definitely announced policy (and practice consistent therewith) of Munson Line both to railroads and shippers that it will not accept or participate in through bills of lading for Florida ports.

9. These facts affirmatively and without contradiction show *two separate and independent contracts of carriage;* one made by the shipper with the rail carrier; and the other separately made by the shipper with the water carrier.

10. These facts also show that the Munson Line is doing a strictly "port to port" business, which, as

elsewhere pointed out in this brief, necessarily lacks certain very definite advantages to the shipper which exist in "through billing."

ARGUMENT

INTERSTATE CARRIERS BY RAIL ARE UNCONDITIONALLY SUBJECT TO THE INTERSTATE COMMERCE ACT; BUT WATER CARRIERS ARE SUBJECT TO THE ACT ONLY WHEN THE TRANSPORTATION IS "PARTLY BY RAILROAD AND PARTLY BY WATER WHEN BOTH ARE USED UNDER A COMMON CONTROL, MANAGEMENT, OR ARRANGEMENT FOR A CONTINUOUS CARRIAGE OR SHIPMENT."

THE RESPONDENT CARRIER IS NOT SO SUBJECT BECAUSE ITS LINE IS NOT USED WITH ANY RAIL LINE UNDER EITHER COMMON CONTROL, MANAGEMENT, OR ARRANGEMENT FOR A CONTINUOUS CARRIAGE OR SHIPMENT.

A

THE STATUTE AND ITS EVOLUTION

(1) CONGRESS HAS ALWAYS DISTINGUISHED BETWEEN RAIL AND WATER CARRIERS IN INTERSTATE COMMERCE LEGISLATION.

Section 6 (1) of the Interstate Commerce Act, as now amended and codified (U. S. C., Title 49, Transportation), provides in part as follows:

> "1. Schedules of rates, fares and charges; filing and posting. *Every common carrier subject to the provisions of this chapter* shall file with the Commission created by this chapter and print and keep open to public inspection schedules showing all the rates, fares and charges for transportation between different points on its own route and between points on its own route and

the points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established." (Italics supplied.)

The immediate question arises as to what common carriers are subject to the provisions of the Act. This we find provided for in Section 1 of the Act (U. S. C., Title 49, Transportation, paragraph 1 [a]), which reads as follows:

"1. *Carriers subject to Regulation.* The provisions of this chapter shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, *or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment.*" (Italics supplied.)

As to the evolution of the act it is to be noted that, *so far as water carriers are concerned*, the phraseology is precisely the same as that contained in the original Act to Regulate Commerce, February 4, 1887, 24 Stat. L. 379, Section 1. This section of the original Act was amended by the Hepburn Act of June 29, 1906, 34 Stat. L. 584, Section 1, and was further amended by the Mann-Elkins Act of June 18, 1910, 36 Stat. L. 534, Section 7. It now reads as amended by Section 400 of the Transportation Act, 1920, February 28, 1920, 41 Stat. L. 474. For convenience

the changes in phraseology from the original Act to its present form can be found in a recent publication entitled "The Legislative Evolution of the Interstate Commerce Act", by Miller, pages 1 to 6.

It is also to be noted by this comparative legislation that as applied to railroad carriers (in interstate commerce, of course) the punctuations of the phraseology in the original Act have been importantly changed by the amendatory Acts. The wording of the original Act and the punctuation was as follows:

> "that the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management or arrangement, for a continuous carriage or shipment from * * *".

The Hepburn Act changed the punctuation so that the clause read as follows:

> "any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) * * *."

The Mann-Elkins Act continued the phraseology and punctuation as it was in the Hepburn Act.

The question for jurisdictional construction which arose was whether the modifying phrase "when both

are used under a common control, management or arrangement for a continuous carriage or shipment." applied to transportation "wholly by railroad". By practically unanimous federal judicial construction it was held that this modifying clause *in the original Act* did apply to transportation wholly by railroad as well as to transportation partly by railroad and partly by water. *Cincinnati, N. O. & T. P. Ry. Co. vs. Interstate Commerce Commission*, 162 U. S. 184, 191; *L. & N. R. Co. vs. Behlmer*, 175 U. S. 648. See also *Int. Com. Com. vs. Bellaire Z. & C. Ry. Co.*, 77 Fed. Rep. 942; *United States vs. Chicago K. & S. R. Ry. Co.*, 81 Fed. 783; Roberts Federal Liability of Carriers (2nd Ed.), Section 113.

The change in punctuation made by the Hepburn Act obviously changed the scope of the modifying clause as to common control, etc., so that it no longer applied to transportation wholly by railroad; and it is assumed (without judicial decision so far as we know) that by the present wording and punctuation of the clause the modifying phrase "common control, etc.", still is inapplicable to transportation wholly by railroad. It is important in reading the decisions as to what carriers are subject to the Act to bear in mind that railroad connecting carriers in interstate commerce are subject to the Act, since the Hepburn Act of 1906, without regard to whether they operate under "common control, management or arrangement". The test as to them is merely whether they

are engaged in *interstate commerce*. But before the Hepburn Act a pure intrastate carrier was not subject to the Act unless it was operated under common control, management or arrangement with some interstate carrier.

But with respect to water carriers there has been no change in the Act from its original passage. Therefore, at no time has a water carrier been subject to the provision of the Interstate Commerce Act unless it has been operated under a common control, management or arrangement for a continuous carriage of shipments with some rail carrier. *Wilmington Transportation Company vs. Cal. R. R. Com.*, 236 U. S. 151-153.

Further evidence of the intention of Congress to distinguish between rail and water carriers was found in Paragraph 2, of Section 1, of the Interstate Commerce Act, sub-section (c), providing that the Act shall not apply—

> "to the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions of this Act except for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling, or other charges by a rail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district." (U. S. C., Title 49, Section 1, Paragraph 2 [c]).

See also Section 25, Paragraph 5, of the present Act relating to schedules and rates of water carriers in foreign export commerce, reading as follows:

> "The issuance of a through bill of lading covering shipment provided for herein shall not be held to constitute 'an arrangement for continuous carriage or shipment' within the meaning of this Act." (U. S. C., Title 49, Section 25, Paragraph 5.)

Still more importantly reference should be made to the "Shipping Act" (U. S. Code, Title 46, Sections 801 to 842), which created the Shipping Board and subjected common carriers by water in interstate commerce thereto, and requires the filing of tariffs and schedules of maximum rates with that Board and requires, on the order of the Board, the carrier to file reports and supply other information. The Munson Line has complied with the Shipping Act (see testimony of Mr. Morse (Record, p. 103; see also Record, p. 49.)

It is obvious that, if water carriers similar to the Respondent are not subject to the Interstate Commerce Act they are nevertheless subject to governmental regulation and control by the Shipping Act. And we submit that the only reasonable construction of the Interstate Commerce Act and the Shipping Act is to limit the application of the former to those water carriers who *voluntarily bring themselves within the scope of the Interstate Commerce Act by making the*

common agreement or arrangement with railroads, referred to in Section 1 of the Commerce Act.

In passing it is to be noted that if a water carrier is subject to the Interstate Commerce Act it is subject to all the provisions which are generally applicable to the carriers defined and included in Section 1. Among the obligations of compliance with the Act is not only the filing of schedules and tariffs of rates, under Section 6, but also the even more onerous and expensive compliance with Section 20 of the Act regarding the form, frequency and contents of reports to the Interstate Commerce Commission, and the keeping of records and accounts accordingly. The Act imposes a very substantial and expensive burden of compliance on those who are subject to it. The public good is, of course, paramount and this burden is thoroughly justified when it applies to large railroad corporations engaged in interstate commerce, but the burden might be prohibitive to small water carriers. The Baltimore-Florida intercoastal traffic here involved is a very small part of the whole marine traffic of the Munson Line, as most of its operations are in foreign commerce. If subject to the Act at all by reason of this relatively very small Florida business, it is arguable that reports to the Commerce Commission under Section 20 of the Act must include detailed reports of all the activities of the Respondent, including its foreign traffic, thus imposing an onerous and expensive accounting to the Commission by Re-

spondent, with incidental and undue advantages to its competitors in foreign trade. *Int. Com. Com. vs. Goodrich Transit Co.*, 224 U. S. 194.

(2) REASONS FOR THE DIFFERENTIATION

There are many other reasons well founded in public policy for the distinction made by Congress between transportation by rail and water carriers, respectively. The basis for this legislative policy is found in the different characteristics of rail and water carriage. Rail transportation in the United States is practically standardized and uniform. There is little difference so far as the carriage of goods is concerned between the service rendered by respective railroads, whether viewed from the standpoint of safety of carriage or speed of carriage or from the standpoint of convenience in receipt and delivery.

It is very different from water carriage. Diversity and not uniformity is there the rule. The character of service may be anything from an open barge to the Leviathan. Neither the safety of the cargo nor the rapidity of carriage is uniform with the different shipping lines. Nor is there uniformity of frequency of sailing dates. Rail carriage is practically a daily matter. Shipping carriage is seldom daily and may be so infrequent on any line as only monthly. Nor is there equal certainty of maintaining an arrival date or delivery for a particular market. Ships are subjected to perils, dangers and delays not applicable to

rail carriage. And shipping lines vary greatly between themselves as to speed, safety and frequency of carriage. It is obvious, therefore, that while rates for substantially uniform rail carriage should be themselves standardized and uniform, it would be quite unreasonable and generally against public policy to require uniformity of rates from shipping companies which give such diversity of service. Congress, appreciating these natural characteristics of rail and water carriage, has never undertaken to enforce uniformity of rates on water carriers.

Where the water carriers' service is so highly developed and stabilized that they can undertake to make "common agreements or arrangements" with connecting rail carriers for through carriage under one bill of lading, they are at liberty and have the option to do so. And there are certain advantages, of course, to the carrier that does adopt this policy. But it requires a relatively standardized service.

And some water carriers may for some lines develop and standardize their business to such an extent as to make it good business policy to enter into these common arrangements with connecting rail carriers. But for other and less standardized and more experimental lines, it might be very unwise policy for the water carrier to commit itself to hard and fast schedules, tariffs and rates.

Another consideration for a difference in legislative treatment of rail and water carriers arises from the fact that a railroad cannot be built overnight but a shipping line can be established any day. All that is required to establish a shipping line is to procure docking facilities at two or more ports and operate a vessel between the ports. Such a vessel can be detached from some other line or bought or may be otherwise available. Also a railroad once built practically cannot be abandoned without great loss of investment; while a shipping line that becomes unprofitable can be abandoned without great loss. Navigable waters are free to all, and stability of rates thereon impracticable in most cases.

The present Munson Line from Baltimore to Florida ports illustrates some of these features of water carriage. This particular line was established in 1926 when the volume of goods for transportation to Florida from the Baltimore territory was very great and so large that railroad and other shipping lines had placed an embargo as against goods for Florida ports, and particularly Miami. To relieve the congestion and to obtain some of the business this particular Munson Line was established. It is certainly doubtful whether Baltimore shippers and Florida consumers could have obtained this relief if the Interstate Commerce Act had required uniform rates and schedules and rigid adherence thereto. (Record, p. 69.)

B.

ADMINISTRATIVE AND JUDICIAL CONSTRUCTION AND APPLICATION OF THE STATUTE

(1) WHAT IS MEANT BY "COMMON ARRANGEMENT" IN THE STATUTE

The Government's brief in the Court of Appeals argued that the charge of the District Court to the jury shows a misconception of the meaning of the term "common arrangement for a continuous carriage or shipment." We submit, however, that the Court's construction and application of the statute is entirely correct and is thoroughly supported by the decisions herein quoted. The gist of the Court's charge on this point is (see Record, pp. 113-14) as follows:

> "It is to be borne in mind that if the Government is to succeed in the present case, the evidence must disclose two things: (1) that the arrangement for the carriage or shipment is a common one, and (2) that that carriage or shipment is continuous. By 'common' the Court thinks must be meant an arrangement between the two kinds of carriers, namely, the rail carrier and the water carrier, not merely an arrangement between the shipper and one of the carriers; and, further that this mutual arrangement must contemplate some participation by both carriers in a continuous carriage or shipment, which is the subject of the arrangement. * * * So turning to the word 'continuous' its use must be predicated upon the assumption that both the

rail and the water carrier participate in some way in the *entire* movement."

As an ordinary matter of construction of the Act, there seems to be nothing uncertain or ambiguous in the language used. The language should be construed, of course, in the light of the well known subject matter. The whole phrase is "*when both are used* under a common control, management or arrangement for a continuous carriage or shipment." The words "common control, management or arrangement" are obviously *ejusdem generis*. In this case the Government does not contend that there was a common control or common management, but only that there was a common arrangement. It is to be noted, however, that the phrase "when both are used" modifies "common arrangement" as well as "common control or management." And the language requires that both the rail and water carriage must be used under a "common arrangement for a continuous carriage." Now at the time of the passage of this Act there was a well-known distinction between (1) a shipment by one road or carrier *over its own line only* for delivery to another carrier to be carried to an ultimate destination beyond the line of the first carrier, and (2) a *through shipment* over the first line and the connecting lines to ultimate destination. In practice the shipper got a through bill of lading in the second case and after his delivery of the goods to the initial carrier he had no further need to worry about the shipment or to take any action with regard thereto.

The purpose and effect of a through bill of lading was well known and established in transportation law. It is defined in 4 Ruling Case Law, heading Bills of Lading, Section 3, as follows:

> "A through bill of lading is one whereby the carrier agrees to transport the goods from the point of delivery to a designated point of destination, although such transportation extends over the line of a connecting carrier. * * * The carrier's liability on such a bill does not cease when the goods are delivered to the connecting carrier unless the terms thereof so specify."

It is obvious that under a through bill of lading the initial carrier takes the shipment and "does the rest". The shipper has to make no other arrangement with any other carrier, he receives no other bill of lading from the connecting carrier, he gives no orders or instructions to the connecting carrier. He is through with the shipment from the time of delivery to the initial carrier. It and its connecting carriers automatically, through the force of the arrangement and through bill of lading, carry the goods by a through route and continuous journey to the point of ultimate destination. For the purposes of the shipment the roads or facilities of both carriers *are used as one* and this is by virtue of a common arrangement between the carriers. So far as railroads are concerned if the carriage is interstate under existing legislation through bills of lading are universally issued under

joint rates and tariffs fixed by the Commission. The initial carrier has no option in the matter but must comply with the shipper's wishes for a through bill.

If, however, the contemplated ultimate destination of the shipment involves a carriage by water from port to port, the Act *does not impose this obligation on the water carrier* to make common arrangements with the rail carrier. The water carrier, therefore, is not compelled on its own initiative to make a common arrangement with the rail carrier for a through shipment. It can make such an arrangement at its option and some water carriers do. The Munson Line does not. Consequently we see the essential differences in the arrangements that the shipper has to make in this case from a case where there is a through bill of lading. Here the shipper employs and pays the rail carrier to take the shipment to the port. He can and in this case often does direct the delivery of the shipment at the destination of the rail bill of lading to the steamship line as the consignee or as his agent. So far as the rail carrier is concerned it has no relation to, or control over, or liability for the shipment after delivery to the Munson Line. *According to the uncontradicted testimony in this case the shipment would stop at Baltimore and not go forward unless and until the shipper gives separate instructions to his agent, the Munson Line, for forwarding the shipment to Florida. By the uncontradicted testimony these instructions are given in every case.* The Munson Line

then issues its separate marine bill of lading to the shipper. That is to say, the shipper makes two separate contracts, one with the rail carrier and one with the water carrier. The two carriers make no arrangement or contract *inter sese*. The two links of the chain of the journey are not connected but are separate. One link is not legally attached to the other. There is no unbroken chain for the journey. The notation in the descriptive portion of the bill of lading is a mere convenient indication to the rail carrier at what point to make delivery of the goods to the Munson Line. It has no legal effect or significance. It has no operative control over the Munson Line. As we have seen, it is varied from at the pleasure of the shipper, which would not be the case on a through bill of lading.

We submit, therefore, that the meaning of the expression "when both are used under a common arrangement for continuous carriage" must necessarily be that, for the purposes of the particular shipment, both the rail and water carrier are linked together by a common arrangement between them whereby both for the particular case are used as one and the journey is, therefore, from the legal aspect, one continuous carriage. Of course, the transfer from the railroad car to the ship does not of itself prevent the journey from being a continuous one. But the consummation of the rail contract and the beginning of a new marine contract does preclude the finding of a common arrangement between the carriers for a continuous carriage, in the sense of the statute.

The meaning of the statute, read in the light of the subject matter and transportation customs existing at the time of its original passage in 1887, is so seemingly plain that there is really no need to resort to legislative history of the passage of the Act. We submit, however, that if resort is so made the plain meaning of the statute will be *confirmed* thereby. And in this connection reference may be made to Painter on Interstate Commerce Debates, Vol. 2, and particularly pages 5, 221, 264, 340, 342 and 565. The first reference to the clause under discussion is found in the remarks of Senator Cullom in introducing the Bill to the Senate as a Committee of the Whole. We submit that it is apparent from the discussion that there was no thought of subjecting the water carriers to the Act merely because they accepted goods as connecting carriers with railroads if the water carriers were independent.

The question may be asked why were water carriers included at all in the Act. This question is well answered by Chairman Knapp of the Interstate Commerce Commission (later a Circuit Judge) in the case entitled, *In the Matter of Jurisdiction over Water Carriers*, 15 I. C. C. at 207, where his language (as quoted by Judge Parker in his opinion in the Circuit Court of Appeals) is this:

> "Looking to the history of the enactment, and without attempting to quote the pertinent portions of the congressional debates and commit-

tee reports preceding the enactment of the law in 1887, there can be no doubt that the main purpose of the act was to regulate transportation by railroad; that the regulation of water lines was merely incidental and collateral, and was included in order that the regulation of railroads might be effective and not virtually nullified by arrangements between railroads and water lines."

And the matter was well summarized by Judge Parker, as follows:

"In other words, Congress was guarding against the possibility of evasion arising from the fact that water carriage was a part of the transportation furnished; and it was intended to subject the water carrier to the jurisdiction of the commission where it was within the power of the rail carrier to evade the Act by his control over water rates whether by control or management of the water carrier or other arrangement.

"It follows from this, we think, that the 'common arrangement' contemplated by the Act must be one between the carriers themselves, giving to one or the other, or both, such an interest in or control over the entire undertaking as to constitute the continuous transportation in some sense a common enterprise; for under no other sort of arrangement would there exist the possibility of manipulating water rates so as to evade the Act designed for the regulation of rail carriers. Such an arrangement as one to deliver freight at the end of a rail line to a water car-

rier to whom it is consigned and who transports it under a separate contract with the shipper is clearly not a common arrangement within the spirit of the provision which we are considering; for, while such an arrangement might result in continuous transportation, it would furnish to the rail carrier no opportunity to evade the Act against which the provision was directed." See Record, p. 198; 37 Fed. (2d), p. 684.

This Court has recently considered the subject of reference to the legislative history of an Act in confirmation of its plain meaning in *United States vs. Mo. Pac. R. Co.*, 278 U. S. 269, 278, where Mr. Justice Butler said:

> "But where the language of an enactment is clear and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended. And in such cases legislative history may not be used to support a construction that adds to or takes from the significance of the words employed. • • •
>
> "But the reasons for and the significant circumstances leading up to the enactment may be noticed in confirmation of the meaning conveyed by the words used."

(2) DECISIONS BOTH OF THE COMMISSION AND OF THE FEDERAL COURTS ON SIMILAR FACTS UNIFORMLY FIND NO "COMMON ARRANGEMENT".

(a) DECISIONS OF INTERSTATE COMMERCE COMMISSION

In *United States vs. Mo. Pac. R. Co.*, 278 U. S.

269-280, Mr. Justice Butler also considered the effect of administrative rulings in aid of the construction of an Act of Congress, saying:

> "It has been held in many cases that a definitely settled administrative construction is entitled to the highest respect; and, if acted on for a number of years, such construction will not be disturbed except for cogent reasons. See *e. g.*, *Logan vs. Davis*, 233 U. S. 613, 627. But the Court is not bound by a construction so established. *Chicago, etc., Ry. Co. vs. McCaull-Dinsmore Co.*, 253 U. S. 97, 99. *United States vs. Dickson*, 15 Pet. 141, 161. The rule does not apply in cases where the construction is not doubtful. And if such interpretation has not been uniform, it is not entitled to such respect or weight, but will be taken into account only to the extent that it is supported by valid reasons."

In *Luckenbach S. S. Co. vs. U. S.*, 280 U. S. 173, it was said as to construction of statutes:

> "In case of ambiguity a construction of a statute by the department charged with its execution should be favored by the Courts, and where such construction has been acted on for a number of years they will look with disfavor upon any sudden change, whereby parties who have contracted with the Government on the faith of it may be prejudiced."

It is submitted that the decisions of the Interstate Commerce Commission have been uniformly consistent with our contentions in this case.

In *Luckenbach Steamship Co. vs. Southern Rwy. Co.*, 157 I. C. C. 752 (decided by the Commission since the institution of this proceeding), the Commission itself said that water carriers handling freight substantially in the manner in which it is handled by defendant here were not subject to the jurisdiction of the Commission. (See further quotation from this case by Judge Parker, Record, p. 202, 37 Fed. [2d] 686.)

And in the case of Baltimore Association of Commerce vs. American Hawaiian Steamship Company before the Interstate Commerce Commission (Case No. 20306, pending when this proceeding was instituted) the very question was involved which is involved in this case. Examiner Hurley of the Commission filed a report finding that the Commission was without jurisdiction over the water carriers, and what he says as to notations on bills of lading and the payment of rail charges (identical with the facts in this case) are of particular interest.

In summarizing this point, he said:

> "The method of handling the traffic under consideration, although indicative of an arrangement for its prompt and efficient interchange, is lacking in the essentials necessary to constitute a 'common arrangement' between the rail and the water carriers. On the contrary, it clearly indicates their independence." (37 Fed. [2d] 686).

In *Wool Rates Investigation*, 1923, 91 I. C. C. 235, 275, it was said:

"Congress has not placed the intercoastal steamship lines under our jurisdiction to the same extent as the rail carriers. Their port to port rates are exclusively under the jurisdiction of the United States Shipping Board and the water carriers are free to charge any rate so long as they do not exceed the maximum schedules on file with the Shipping Board.".

And in *Transcontinental Commodity Rates*, 32 I. C. C. 449, the Commission said:

"As we understand it, the ocean lines (intercoastal lines) insist upon handling their business as a purely local transaction from port to port, and will not accept traffic on through bills of lading to or from the interior points. This is probably due to the fear on their part that the traffic, if handled on through bills of lading, would constitute transportation 'by rail and water', and therefore be subject to the jurisdiction of this Commission and to the requirements of the Act."

In *Corona Coal Co. vs. Secretary of War*, 69 I. C. C. 389, the Commission said:

"In the transportation act, 1920, Congress set forth explicitly our power and duty to deal with intrastate rates which unjustly discriminate against interstate commerce or unduly prejudice persons or localities engaged in such commerce, but made no mention of any similar or analogous power over local port-to-port rates of water carriers. On the contrary, wherever in the Act specific mention is made of such rates, the intent

is disclosed to exclude them from our jurisdiction. If Congress had desired us to have the power which complainant asks us to exercise, this could easily have been made clear."

See also:

Lake & Rail Butter & Egg Rates, 29 I. C. C. 45.

Augusta & Savannah Steamboat Co. vs. Ocean S. S. Co., 26 I. C. C. 380.

Ulman vs. Adams, 14 I. C. C. 340.

Lykes S. S. Line vs. Commercial Union, 13 I. C. C. 310.

(h) DECISIONS OF THIS COURT AND OTHER FEDERAL COURTS.

In *Cincinnati, N. O. & T. P. Ry. Co. vs. Interstate Commerce Commission*, 162 U. S. 184 (the Social Circle case, decided in 1896, and therefore before the passage of the Hepburn Act), this Court dealt with the question of whether an interstate rail carrier was subject to the Act by participating under a *through bill of lading* in an interstate shipment. It was held to be subject to the Act and this Court said:

"All we wish to be understood to hold is, that when goods are shipped under a through bill of lading, from a point in one State to a point in another, and when such goods are received in transit by a State common carrier, under a conventional division of the charges, such carrier must be deemed to have subjected its road to an

arrangement for a continuous carriage or shipment within the meaning of the Act to regulate commerce. When we speak of a through bill of lading we are referring to the usual method in use by connecting companies, and must not be understood to imply that a common control, management or arrangement might not be otherwise manifested."

In commenting on this case Judge Parker in the Circuit Court of Appeals, correctly we think, said:

"It will be noted, that, while the Court does not hold that common control, management or arrangement may not be manifested otherwise than by through billing, it clearly implies that for any arrangement to come within the meaning of the Act it must result in the creation of a 'continuous line', *i. e.*, a line over which goods are transported by virtue of agreement, express or implied, between the carriers themselves. *And we think that no case can be found holding that a common arrangement existed within the meaning of the Act where there was not such 'continuous line', created either by through billing or conventional division of rates.* See *Interstate Com. Com. vs. Goodrich Transit Co.*, 224 U. S. 194; *L. & N. R. Co. vs. Behlmer*, 175 U. S. 648; *Standard Oil Co. vs. U. S.* (C. C. A. 2nd), 179 Fed. 614; *U. S. vs. Wood*, 145 Fed. 405, 411; *U. S. vs. Seaboard Ry. Co.*, 82 Fed. 563; *Levy vs. Old Dominion S. S. Co.*, 154 N. Y. S. 227." (Italics supplied.)

In the present case it will, of course, be remembered that there was no joint or total rate agreed upon by the carriers *inter sese*, and we contend no continuous line.

Most of the above cases dealt with transportation wholly by railroad. And we submit that none of them either held or even indicated that a common arrangement would be made out on facts similar to those in the present case.

On the contrary, *where the facts have been similar to those in the case at bar*, the holding has been that there was no "common arrangement" between rail carriers.

Thus in *Interstate Commerce Commission vs. Bellaire, Z. & C. Ry. Co.* (Circuit Court, S. D. Ohio, E. D. January 11, 1897), 77 Fed. Rep. 942, it was held by District Judge Sage that the respondent railway company was not obliged to file reports to the Interstate Commerce Commission under Section 6 of the supplementary Interstate Commerce Act of August 7, 1888, where the railroad's line was wholly within a single State and where it carried freight destined to points beyond such State but never issued bills of lading to points beyond its own line and received no freight on through bills of lading and had no arrange-

ment with other roads for a conventional division of charges or for a common control or management. District Judge Sage said:

> "It appears from the testimony of the receiver of the road and its auditor that, although a common carrier of freight, including freight marked and destined to points beyond its terminus, and in many cases to points beyond the State lines of Ohio, it never issues a bill of lading to any point beyond its own lines. Upon the bill of lading the marks upon the freight, the name of the consignee, and the destination, appear, but the bill of lading itself is always limited to the line of the company's road. It also appears that its charges upon freight destined for points beyond its own terminus are paid as advance charges in many instances by the railroad company which takes the freight to its final destination.
>
> "Further, it appears that the company receives no freight under through bills of lading; that is to say, if freight comes from another carrier destined to a point on its own line, it invariably issues its own bill of lading, and refuses to receive such freight upon any through bill issued by another company, although it pays advance charges when necessary, and collects them from the consignee."

Judge Sage then reviews the case of *Cincinnati, N. O. & T. P. Ry. Co. vs. Interstate Commerce Commission*, 162 U. S. 184 (The Social Circle case), with

particular reference to the expression of Mr. Justice Shiras as follows:

> "When we speak of a through bill of lading, we are referring to the usual method in use by connecting companies, and must not be understood to imply that a common control, management, or arrangement might not be otherwise manifested."

Judge Sage then says:

> "Such control, management or arrangement is not however otherwise manifested in this case."

Even though the Court also found as follows:

> "By arrangement between the defendant company and the Baltimore & Ohio Company, and for compensation, the freight agent and the passenger agent of the Baltimore & Ohio Company acted in that capacity also for the defendant company, and attended to its business; but there is in no sense any community of interest between the companies, nor is there in any instance any arrangement for the continuous carriage of freight, nor for the division of charges.
>
> "My opinion, therefore, is that the defendant company is not within the purview of the Interstate Commerce Act, and cannot be compelled to make the report called for. I have no doubt that Congress would have the power to amend the Act so as to require this and other companies

occupying like relations to file reports, inasmuch as they all carry freight destined for points beyond the State in which the road is located. But the Act is not so framed as to include the defendant company, and, while it is a proper act of courtesy for the defendant company to furnish annual copies of its report to the State Commissioner of railroad and telegraphs, it cannot be forced to make such reports. The provision of the supplemental Act is to be strictly construed, for the reason that Section 6 enacts that the failure or refusal to make report shall operate as a forfeiture in each case in a sum of not less than $1,000 nor more than $5,000, to be recovered by the Attorney General of the United States, in the name and for the use and benefit of the United States. The Act is, therefore, penal in its nature."

A similar conclusion was reached in *United States ex rel. Interstate Commerce Commission vs. Chicago K. & S. R. Co.* (Circuit Court W. D. Mich. S. D. June 23, 1897), 81 Fed. 783, by District Judge Severens under similar facts. This latter case also came up on a petition for mandamus to compel the Respondent railroad company to file a report under the provisions of the Interstate Commerce Act. It was said—

"It appears from the answer and amended answer, which are taken by the parties as showing the facts of the case, that both the termini of the defendant's railway are within the State

of Michigan, that it transports freight, whether shipped upon its line for destinations out of the State or from abroad to stations on its own line, upon local bills of lading under a special contract of carriage limited to its own line. It does not do such business upon through rates, which it divides with other carriers, or assume any obligation to or for them in respect of such carriage; and the delivery which it makes to other carriers, and its reception from them of freight, is not substantially different from a delivery to or reception from any consignee or consignor. * * * The result is that the defendant is not subject to the requirement of the Commission to make report to it of its business under Section 20 of the Interstate Commerce Act, and that the motion for a mandamus to compel it to do so must be denied."

A similar view was taken by the Circuit Court of Appeals for the Sixth Circuit in *United States vs. Geddes*, June 8, 1904, 131 Fed. Rep. 452 at 456, where Circuit Judge Richards said:

"In the present case there was no through bill of lading, no through charge, no conventional division thereof among the carriers and no arrangement for a continuous carriage or shipment, unless the method of transfer by which the receiving road assumed the payment of the charges of the delivering road constituted such an arrangement. If it did, then the only way a local road can escape participation in an arrangement

for a continuous carriage or shipment of freight from one State to another is to refuse altogether to handle such freight; and it cannot do this, for, as a common carrier, it is bound to receive and transport from one point to another on its line, freight offered it for transportation, regardless of the origin or destination of the freight; * * *

"The defendant company did all it could to keep its business local. It limited its interest, so far as it could, to the transportation of the freight over its own line. It made no arrangement with the Baltimore and Ohio for through carriage either way. It was interested in none. It shared none. It was interested only in its own local charge, and whatever arrangement it made was with a view simply of securing this. The fact that certain goods transported by it were marked for other States or received from other States did not make it a party to any arrangement for their interstate transportation in either direction. The part it performed was purely local."

See also the same case in the District Court S. D. of Ohio E. D. August 19, 1903, 180 Fed. 480.

(c) CASES DEALING WITH WATER CARRIERS

There are fewer decided cases involving water carriers in this connection. One of the earliest and frequently cited cases is *Ex Parte Koehler*, 30 Fed. 867 (Cir. Ct. of Oregon, 1887), where in considering

what constituted common control and continuous shipment District Judge Deady said (page 869):

> "The mere fact that a railway wholly within a State and a vessel running between said State and another meet at a point within the railway State, and thus form a continuous line of transportation between the two States, by the one taking up the goods delivered by the other at its terminus, and carrying them thence to their destination, does not bring the carriers who so use the railway and steamer within the Act. So long as the railway and steamer are each operated under a separate and distinct control, making its own rates, and only liable for the carriage and safe delivery of the goods at the end of its own route, the Act does not apply to the transaction. To make these carriers subject to the Act, the railway and vessel must, as therein provided, be operated or used under a 'common control',—a control to which each is alike subject, and by which rates are prescribed and bills of lading given for the carriage of goods over both routes as one."

In a recent case, *American Cast Iron Pipe vs. Atlantic Gulf and Pacific SS. Corporation* (S. D. of Fla.), 2 Fed. (2d) 397, District Judge Call said:

> "There is nothing in the amended libel to show that the shipment was to be a continuous one from Birmingham to the Pacific Coast, or that

a through bill of lading was issued by the carrier receiving the iron pipe for transportation to Mobile. On the other hand, it seems to me that the allegations of the amended libel, when properly construed, allege that, insofar as the transportation of the iron pipe is by water, the shipment originates at Mobile. The terms of the Interstate Commerce Act do not apply to the contract alleged in the pleading."

In *Mutual Transit vs. United States*, 178 Fed. 664 (C. C. A. [2nd] 1910), there was a criminal prosecution against a water carrier for giving an alleged rebate to a shipper. The opinion of the Circuit Court of Appeals (reversing that of the District Court) in holding that the water carrier was not subject to the Act because it had entered into no common arrangement with the rail carrier, said, among other things, as follows:

"The phrase 'common arrangement' in view of its context, evidently means an agreement or understanding between connecting carriers with respect to the transportation of merchandise and the charges and division of the charges to be made therefor. A mere agreement by an independent water carrier to accept freight from a connecting railroad, and to transport it for its own particular rate, might be an 'arrangement' for continuous carriage, but would not be a 'common arrangement. * * *'

"The real arrangement under which this

freight moved was made between the defendant and the shipper. The defendant entered into no agreement with the other carriers. They were not parties to its agreement with the shipper. * * * The mere fact that the initial carrier made out the bill of lading according to its published rates and division sheets, and that the defendant permitted the carriage to go on under such documents, did not, in our opinion, make it a party to a 'common arrangement' for a rate in excess of that stipulated in the real contract under which the freight was offered for transportation."

In the particular case the shipment moved on a through bill of lading issued by the initial rail carrier but prior to the shipment the water carrier had agreed with the shipper to "protect" a rate lower than that named in the rail bill of lading for the water carrier. And as to this the court said:

"An intermediate water carrier which is a party to a special agreement with a shipper covering a shipment cannot properly be said to be a party to a 'common arrangement' wholly inconsistent therewith merely because of recitals by the initial carrier in the bill of lading. Especially should this be true where the water carrier has refrained from concurring in the tariff under which the recitals are made."

See also a similar decision on the same facts in

Camden Iron Works vs. United States (C. C. A. 3rd), 158 Fed. 561.

State Court decisions on similar facts are to the same effect.

Macomber and Whyte Rope Company vs. United Fruit Co. (1922), 225 Ill. App. 286.

American Peanut Corporation vs. St. Louis and Tennessee River Packet Company (1923), 3 Tenn. Apps. 552.

Levy vs. Old. Dom. S. Co., 154 N. Y. Supp. 227.

We have referred above to decisions of the Interstate Commerce Commission on similar facts affecting water carriers.

The understanding of the law in well known text books is stated to the same effect. See 12 *C. J.*, page 121; *Roberts on Federal Liabilities of Carriers*, 2nd Ed. 1929, Secs. 114, 116, where the author says (114):

"The primary purpose of Congress in the passage of the statute was to regulate transportation by railroad. The control of carriers by water was merely incidental and collateral, and they were included so that the regulation of carriers by rail might be effective and not be destroyed by subterfuges and contracts entered into with

water lines. When water carriers become amenable to the requirements of the statute and the jurisdiction of the Interstate Commerce Commission, they do so by choice in entering into a common arrangement or control with railroads."

See also to the same effect *Moore on Interstate Commerce*, Section 45, Rail and Water Traffic; and *Barnes on Interstate Transportation*, 2nd Ed., Secs. 48, 57; *Drinker on Interstate Commerce Act*, Section 42, Rail and Water Traffic.

And in Section 116 of Roberts, the author says:

"So long as the rail and water lines are each operated under a separate and distinct control, each making its own rates and billing for the carriage and delivery of the goods solely to the end of its own line, the Act does not apply to water carriers. * * * The receipt successively by the rail and water carriers for transportation of traffic shipped under through bills for continuous carriage over their lines is an assent to a common arrangement for such continuous transportation."

"Common arrangement" referred to in the Act clearly refers to an arrangement between the rail and water carrier and not arrangements between the shipper and either carrier. *Roberts*, Section 116.

C.

ANSWERING THE GOVERNMENT'S PRESENT CONTENTION

(1) THERE WAS NO THROUGH BILL OF LADING OR COMMON ARRANGEMENT FOR THROUGH SHIPMENT IN ANY FORM

As above pointed out, the Government's brief *assumes* that the evidence shows that the traffic in question involved—

(a) continuous shipment,

(b) not requiring intervention by the shipper at Baltimore.

(c) that the notation on the rail bill of lading made possible a through shipment.

We dispute the proposition that the evidence justifies a finding of these facts. On the contrary we contend that the uncontradicted evidence shows that they did not exist in this case. As to a "continuous shipment", assuming that it was such in the physical sense of an uninterrupted journey from an inland point to a Florida port, it was nevertheless not a continuous shipment in the sense of the statute, which requires that both rail and water carriage must be used under a common arrangement for a continuous shipment. We have above discussed this phase of the case and will not repeat the argument on this point.

We have also pointed out specifically that the shipper in this case is obliged to intervene at Baltimore by giving directions to the Munson Line for further

carriage of the goods. The evidence is uncontradicted that such intervention by the shipper is required in the case of every shipment by the Munson Line. The exhibits filed by the Government in the illustrative cases of traffic show this intervention by the shipper by his instructions to the Munson Line as authority and directions for further carriage of the goods. (See Record, p. 131, being letter of instructions from Charles C. Fisher [shipper] to Munson Line; Record, p. 147, being similar letter of instructions from Lancaster Iron Works as shipper; Record, p. 159, being letter of instructions from the Studebaker Corporation as shipper; Record, p. 183, being letter of instructions from My Own Company as shipper.)

The argument of the Government seems to be that it might be possible for this class of transportation to be conducted without the intervention of the shipper at Baltimore and, therefore, the case must be judged as if there were no such intervention. But this assumption ignores the uncontradicted evidence that such intervention is uniformly required by the Munson Line with respect to its traffic to Florida ports. And the case, we submit, must be decided on the facts that exist and not assumptions contrary to the facts.

What the Munson Line does for the shipper in this respect is to maintain for him an agency in Baltimore to take delivery from the rail carriers and to reship over its line in accordance with his instructions given in each individual case. It is certainly not for-

bidden by law to the Munson Line to so act as agent for the shipper at Baltimore. And there is certainly nothing in the Interstate Commerce Act to forbid the shipper to use the mail or telephone or telegraph to advise his agents in Baltimore what to do with the shipment. His personal presence in Baltimore is certainly immaterial. The shipper is clearly entitled to avail himself of modern conveniences of the mail, telephone or telegraph in dealing with the Munson Line. His instructions so given to his agent at Baltimore are the same in legal effect as if he personally appeared in Baltimore and received the goods from the rail carrier and then delivered them to the Munson Line. It is not reasonable to suppose that there is any public interest involved in requiring the shipper to be put to the inconvenience of coming personally to Baltimore to accomplish the delivery to the Munson Line.

In the District Court the Government contended that the traffic transportation documents in this case showed a through bill of lading. This contention, we understand, has now been abandoned in form but is sought to be maintained in substance in the contention that there was made possible a *through shipment.*

The argument of the Government on this point seems to be based on the notation in the body of the rail bill of lading under the caption "description of articles, special marks and exceptions" which, for illustration in the exhibits (Record, p. 19), reads as follows:

"(For Charles C. Fisher, Miami, Florida)"

But the evidence is uncontradicted that this notation *has no force or effect to make possible a through shipment*. It does not of itself effect or cause a carriage of the goods beyond Baltimore, because, as just pointed out, the goods would stop at Baltimore and not move forward on the Munson Line without separate and express instructions from the shipper. The purpose and effect of the notation in the rail bill of lading is for the convenience of the rail carrier and incidentally of the shipper to indicate to the rail carrier where in Baltimore to make delivery of the goods. The purpose and function of this notation is fully explained by Mr. Couse, of the Baltimore and Ohio Railroad, to whose testimony on this point we have previously referred (Record, p. 68).

This notation in the rail bill is not the place of *destination* under the rail bill, nor does it operate to extend the coverage of the rail bill of lading to the water journey. Indeed it does not state how the goods are to be carried from Baltimore to Miami, Florida, whether by rail or by water. Similar notations on bills of lading are not unusual. They are primarily for the convenience of the railroad company in accomplishing the carriage and for convenience of the shipper and consignee or their agents in identifying the goods.

The rail bills of lading in this case are in the form

of the uniform bill of lading, now a well known commercial transportation document prescribed or approved by the Interstate Commerce Commission in accordance with statute. Looking at any of the rail bills of lading in this record we find that the destination of the shipment is clearly stated to be Baltimore, Maryland. As a matter of legal construction of this document, it is entirely apparent that when the goods are delivered at Baltimore to the consignee named, the contract by the rail carrier has been fully and completely executed and there could be no further possible liability of the rail carrier on this document. If, as is often the case, the rail bill of lading is an order bill of lading it must be physically surrendered to the rail carrier upon delivery of the goods. If it is a straight bill of lading it does not have to be surrendered but is executed and accomplished by the delivery at Baltimore. The simple test of whether this bill of lading has any force and effect after delivery of the goods at Baltimore can be found in a claim that might arise by damage to the shipment during the water carriage. If the rail bill of lading were a through bill of lading the rail carrier under the Carmack amendment as the initial carrier would be liable for the damage occurring on the water journey. But obviously this cannot be the case under a rail bill of lading in which the destination is clearly stated to be Baltimore and which, in the case of an "order" bill of lading, is physically surrendered at Baltimore.

As already noted, there are real differences both in law and in business between one through bill of lading from an inland point through Baltimore to Florida ports, and two separate bills of lading, one by rail to Baltimore and one marine from Baltimore. The legal difference is that the latter are separate and distinct contracts with separate coverages. The shipment moves to Baltimore and is subject only to the terms of the rail bill of lading. It moves from Baltimore subject only to the marine bill of lading. In the financial sense the through bill of lading is more valuable to the shipper because he can often discount a draft on the consignee with a through bill of lading attached. This he cannot do where the journey is legally broken at Baltimore and separate bills of lading are issued for the two separate stages of the whole journey. The shipper may also incur a fire risk to the goods in Baltimore after the expiration of the "free time" stated in the rail bill of lading.

We submit, therefore, that there are real and substantial differences, and not merely formal differences, involved in the consideration that there is no through bill of lading in this case. And the existence of this substantial difference has an important bearing on the ultimate question as to whether both rail and water carriers are here used under a common arrangement for a continuous shipment. As neither carrier participates in any way in either the profits or obligations of the other's bill of lading, it certainly must be

that there is no common arrangement between the carriers for a continuous carriage for the whole journey.

The effect of this kind of a notation on the rail bill of lading (to which the water carrier is in no way a party) was considered in the opinion of Examiner Hurley of the Interstate Commerce Commission in Case No. 20306, before the Interstate Commerce Commission, entitled "*Baltimore Association of Commerce et al. vs. American Hawaiian Steamship Company et al.*, already referred to and quoted from in the opinion by Judge Parker in the Circuit Court of Appeals. That case involved consideration of "intercoastal" traffic where the transportation practice was identical with that of "coastwise traffic" in this case. That is to say, the interchange of the goods from the rail to the water carrier was under similar circumstances. The transportation practice is stated at length by Examiner Hurley and will be seen to be exactly similar to that involved in this case. In part the description is as follows:

> "All shipments, generally speaking, are originally consigned to a steamship company or to a consignee in care of the steamship company serving the North Atlantic port. There is usually an indication in the bill of lading that the 'notify' party is the steamship company. * * * In the majority of cases the bills of lading show in the body or descriptive portion thereof, a destination on the Pacific Coast."

In recommending a dismissal of the complaint on the ground that there was no jurisdiction because there was no common arrangement between the rail and water carrier the Examiner said:

> "The railroad bills of lading govern only the movement from the inland point of origin to the North Atlantic ports. This traffic, insofar as the rail carriers are concerned, moves to the North Atlantic port in exactly the same manner as does traffic destined for local consumption at the ports or for export. * * * The transportation service of the rail carriers and their contract of carriage terminates with delivery of the traffic on the pier into the custody of the consignee or his agent, usually the steamship company. They have no further interest in it. With the issuance of the new bill of lading the duty of transporting to the Pacific Coast port and the responsibility for that carriage rests entirely upon the water carrier. It is treated by the steamship company as a new shipment, from port to port, and it recognizes no relationship, contractual or otherwise, with the rail carrier. * * * *The indication of a Pacific Coast port in the descriptive portion, or body, of the railroad bill of lading is but incidental and of no binding force or effect with respect to the contract of carriage.* * * * In accepting the shipment from the rail carrier and in advancing the rail charges at the North Atlantic port the steamship company obviously is acting as agent for the Pacific Coast consignee. The relationship between the steamship company

> and the railroad cannot be said to be different than that between the railroad carriers and agents of other consignees. * * * The method of handling the traffic under consideration, although indicative of an arrangement for its prompt and efficient interchange, is lacking in the essentials necessary to constitute a 'common arrangement' between the rail and water carriers. On the contrary it clearly indicates their independence." (Italics supplied.)

An agreement for carriage beyond its own lines will not be inferred against a carrier from doubtful expressions or loose language but only from clear and satisfactory evidence. *Michigan Central Ry. Co. vs. Myrick*, 107 U. S. 102; *The Thomas McManus*, 24 Fed. 509; *Taylor vs. Maine Central Railroad*, 87 Me. 299; *Herring vs. Chesapeake R. R.*, 101 Va. 778; *McConnell vs. Norfolk*, 86 Va. 248.

The Government's statement of the "question presented" also assumes as a factor in the case that "the railroads connecting with the water carrier "cooperate" with it in informing shippers as to the notations on the railroad bills of lading." Cooperation is, of course, not synonymous with common arrangement —it is a much looser term. But even if it were synonymous, it certainly does not constitute a common arrangement between rail and water carrier whereby both are used for a continuous shipment. And the cooperation referred to relates merely to the

facilitation of delivery of the goods from the rail carrier to the water carrier as agent for the shipper and not for a continuous journey by virtue of the rail bill of lading or any arrangement or agreement between the carriers. But we seriously doubt if the facts referred to as cooperation are properly so described in this case. What the Government here refers to are the circulars issued to prospective shippers by the rail carriers soliciting business for rail carriage to Baltimore for their own respective charges and, therefore, for their own individual benefit. It is true they are soliciting a class of traffic which is ultimately intended by the shipper to go on by water carriage from Baltimore to Florida ports. And in order to obtain this class of business the rail carriers point out to the shipper how delivery of the goods at Baltimore may be facilitated. This is not primarily cooperation between the carriers but rather cooperation between the rail carrier and the shipper. To the extent that the water carrier is included at all in the cooperation, it is only as agent for the shipper. It is, therefore, we think, a rather strained use of the term cooperation to apply it to the facts of this case as denoting cooperation *between the carriers.*

(2) BAER BROTHERS VS. DENVER AND R. G. R. R. CO., 233 U. S. 479, DISTINGUISHED

In the Circuit Court of Appeals, the Government relied on the cases of *Baer Brothers vs. Denver R. G. R. R. Co.*, 233 U. S. 479; *B. & O. S. W. R. R. vs.*

Settle, 260 U. S. 166, 171; *Southern Pacific Terminal Co. vs. I. C. C.*, 219 U. S. 498, 527, and *Texas and N. O. R. R. Co. vs. Sabine Tram Co.*, 227 U. S. 111; of which the Baer Brothers' case is now principally stressed.

None of these cases involved an inquiry under Section 1 of the Act as to a common arrangement between a rail and water carrier, but dealt with railroads only. The crucial issue in each case was whether the rail carrier was subject to the jurisdiction of the Commission by reason of the *interstate character* of the shipment. For instance in *B. & O. vs. Settle*, 260 U. S. 166, the shipper was endeavoring to escape a joint through rail rate by combining two separate rates smaller in the aggregate and it was held that his intention as to ultimate destination was controlling as to the character of the shipment, otherwise he would be able to defeat the purposes of the Commission in establishing the through rate and thus obtain an unfair advantage.

While the *intention of the shipper* as to ultimate destination is important and may be conclusive on the issue of whether a shipment is intra-state or interstate, it is obvious, we submit, that the intention of the shipper is immaterial with respect to rail and water carriage in the absence of a common arrangement between the rail and water carriers. The question in this case is not whether the shipper intended that the

shipment should go on by rail and water carriage to ultimate destination but whether in respect to carriage the rail and water carriers have agreed and arranged between themselves to use both their lines for a continuous carriage.

The question in this case is not whether the goods transported were interstate commerce—which is a different and wider question. The difference is, we think, obvious but is well illustrated by cases arising under the "safety appliance act". For instance, compare the conflicting decisions of the Sixth Circuit Court of Appeals in *United States vs. Geddes,* 131 Fed. Rep. 452, with that of the Circuit Court of Appeals for the Eighth Circuit in *United States vs. Colorado and N. W. R. Co.*, 157 Fed. 321, and that of the Ninth Circuit in *Pacific Coast Railway Co. vs. United States*, 173 Fed. Rep. 448. In the Geddes case the Court took the view that the railroad company (which operated its road wholly within the confines of a particular State) was not subject to the safety appliance act because not engaged in interstate commerce, unless the railroad had entered into some common arrangement with an interstate carrier. But in the contrasted cases the other courts took the view that the question of what constituted interstate commerce was a wider and broader question than merely whether the local road was operating with respect to the traffic involved under a common arrangement with an interstate carrier, that is to say, inter-

state commerce was broader than the classification of carriers as given by Section 1 of the Interstate Commerce Act. And in these latter cases the courts, therefore, held that a purely intrastate rail carrier participating in the movement of interstate commerce, although not under any common arrangement with the interstate connecting carrier was subject to the "safety appliance" act.

The Government especially stresses the alleged applicability to this case of *Baer Brothers vs. Denver R. G. R. R. Co.*, 233 U. S. 479. *This case is clearly distinguishable on the facts.* In the Baer case the railroad was sued by the shipper to recover a refund (of excessive rates) ordered by the Commission. It defended on the ground that it was not subject to the jurisdiction of the Commission because only an intrastate carrier. It was held liable because it had participated in a through interstate shipment with another interstate carrier without technically a through bill of lading but with a *conventional division of an entire freight charge, made and collected by the initial carrier.* The facts (p. 480) showed that the initial carrier at St. Louis, Missouri, had given receipts to the shipper for the goods—"in good order to be delivered to the Baer Brothers Company at Leadville, Colorado (the ultimate destination), via the Denver and Rio Grande". This Court held the long continued course of dealing between the two carriers and the division of the freight, with the knowledge that it had

been paid *as compensation for the single haul* made the intrastate carrier subject to the jurisdiction of the Commission.

The Court indicates that if the intrastate carrier had received the goods independently of any existing arrangement with the other rail carriers a different question would have been presented. The dominant differences on the facts, comparing the Baer case and the case at bar, are as follows:

In the Baer case the shipper dealt only with the initial rail carrier. In the Munson Line case the shipper is obliged to make two separate contracts, one with the rail carrier and one with the Respondent water carrier.

In the Baer case connecting rail carriers made a conventional division of a single freight payment made as compensation for the whole journey. In the Munson Line case the shipper or consignee makes payment to the Munson Line of the amount it has disbursed for his account to the rail carrier plus, separately stated, its own charge for the water carriage.

In the Baer case the shipper at no time intervened at the connecting point between the two carriers to direct or control the further carriage of the goods. In the Munson Line case the shipper is required in every case to separately make his arrangement with the water carrier for further carriage.

In the Baer case the intrastate carrier never issued its own bill of lading to the shipper. In the Munson Line case a separate marine bill of lading is always issued to the shipper.

In the Baer case the shipment moved forward on a continuous rail journey from point of origin to point of ultimate destination by force of arrangement between the shipper and the initial carrier which necessitated in turn some arrangement between the carriers themselves. But in the Munson Line case a shipment does not go forward from the connecting point by virtue of any arrangement between the carriers but by a separate arrangement made by the shipper.

In the Baer case the dominant issue was whether the carrier was subject to the Act by engaging in interstate commerce. It is true the facts there found were also referred to as constituting a common arrangement between the rail carriers. The case was decided in 1913, long after the passage of the Hepburn Act. Apparently the railroad transportation practice involved extended over a period prior and subsequent to the passage of the Hepburn Act. After the passage of the Hepburn Act the jurisdiction of the Commission was dependent not upon the existence of a common arrangement between the rail carriers but only on whether there was interstate commerce. It may therefore be questioned whether the Court in using the expression "common arrangement" in the opin-

ion was applying the phrase in its statutory sense as applicable to rail carriers prior to the Hepburn Act.

But assuming (for sake of argument only) that the facts incidentally called a "common arrangement" in the Baer case would constitute a "common arrangement" within the issue in the instant case, it is sufficient that in the instant case (as both courts below have found) the facts so characterized in the Baer case are lacking.

In the Baer case the Court said on the facts there appearing:

> "That there was a common arrangement between the two carriers here was shown by the long-continued course in dealing, and *the division of the freight, with the knowledge that it had been paid as compensation for the single haul.*" (Italics supplied.) (233 U. S. 491.)

In the instant case

> "there is *no* agreement between defendant and the rail carriers for the division of the aggregate of the separate rail and water rates, *or any customary or conventional division thereof.* * * * Defendant receives the freight at Baltimore as agent of shipper and pays the rail charges. It then issues a bill of lading to the shipper covering the water transportation. Upon delivery in Florida, it collects from the consignee its own charges as well as the rail charges which it has advanced; but the latter are collected, not as

agent for, or under any agreement with, the rail carrier, but because they have been advanced as an incident to the contract between defendant and the shipper.". (Italics supplied.) (Record, p. 194, 37 Fed. [2d] 681-682.)

In a word, this Court in the Baer case said that certain specific facts showed a "common arrangement"; in the instant case *those facts* are lacking, and both courts below hold that *different facts* do *not* show a "common arrangement".

The Baer case has been frequently cited on the proposition as to what constitutes interstate commerce but so far as we have been able to find it has never been cited on the point as to what constitutes a "common arrangement". See, for instance, *Atlantic Coast Line R. R. Co. vs. Standard Oil Co.*, 275 U. S. 268; *United States Feldspar Corp. vs. United States*, 38 Fed. (2nd) 94 (District Court of New York); *Ingalls vs. Maine Central R. R.*, 24 Fed. (2nd) 113, 115 (District Court of Maine); *Missouri K. & T. R. vs. Northern Okla. Rys.*, 25 Fed. (2nd) 689, 697 (C. C. A. 8th); *Erie R. Co. vs. United States*, 32 Fed. (2nd) 613, 614 (D. C. N. J.); *B. & O. S. W. Ry. vs. Settle*, 260 U. S. 166, 170; *Phila. & R. Ry. Co. vs. Hancock*, 253 U. S. 284, 286.

There is also to be noted a distinction between cases dealing wholly with railroads and cases dealing with rail and water carriers with respect to what facts may constitute a common arrangement. By reason of the

intrinsic differences in the subject matter of connecting rail carriers and interchange of freight between rail and water carriers, it does not necessarily follow that facts which might be sufficient to show a common arrangement by connecting rail carriers would necessarily justify finding of such an arrangement between rail and water carriers. That is to say, the implication of a common arrangement could, by reason of the nature of rail carriage, be more readily inferred than in the case of separate rail and water carriers. This distinction has been pointed out by the Circuit Court of Appeals for the Third Circuit and also for the Second Circuit in finding against a common arrangement between rail and water carriers and distinguishing the case from the language of this Court in *Cin., N. O. and Tex. Pac. Ry. Co. vs. Interstate Commerce Commission*, 162 U. S. 184, a case dealing with connecting rail carriers only. *Camden Iron Works vs. United States*, 158 Fed. Rep. 561; and *Mutual Transit Co. vs. United States*, 178 Fed. Rep. 664, 668.

CONCLUSION

We submit that the discussion of the facts and law shows that there was no error in the action of the District Court in instructing a verdict for the Respondent on the grounds that there was (a) no sufficient evidence of a "common arrangement" and (b) that the uncontradicted evidence really established the con-

trary. It seems needless to discuss other alleged errors assigned in the Court of Appeals but no longer pressed by the Government.

We respectfully pray an affirmance of the judgment of the Circuit Court of Appeals.

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Counsel for Respondent.

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SUPREME COURT OF THE UNITED STATES.

No. 85.—October Term, 1930.

The United States of America, Petitioner, *vs.* Munson Steamship Line.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

[March 23, 1931.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The Government instituted this proceeding, at the request of the Interstate Commerce Commission, under section 20, subdivision (9), of the Interstate Commerce Act,[1] for a mandamus to compel the Munson Steamship Line to file schedules covering rates and charges for transportation of goods by water from Baltimore, Maryland, to ports in Florida, upon the ground that the property was being transported partly by rail and partly by water under a common arrangement for continuous carriage and shipment from interior points to the Florida ports. The respondent's answer alleged that the transportation on its part consisted of an independent water movement with respect to which the filing of tariffs was not required. On a trial before the court and a jury, the District Judge directed a verdict for the respondent (33 Fed. (2d) 211), and the judgment entered accordingly was affirmed by the Circuit Court of Appeals. 37 Fed. (2d) 681. The Government ~~brings this appeal~~ was granted a writ of certiorari

The facts, as found by the courts below upon evidence substantially undisputed, may be summarized as follows: The respondent operates a line of steamers from Baltimore, Maryland, to Jacksonville and Miami, Florida. It accepts from rail carriers at Baltimore goods which have been transported from inland points and carries them to the Florida ports. The transportation is not covered by through bills of lading or by through or joint rates, and there is no agreement for the division, and no customary division, of rates between the respondent and the rail carriers. The goods are shipped by rail to Baltimore in care of, or with direction to notify, the respondent, and the name

[1] U. S. Code, Tit. 49, sec. 20 (9).

of the ultimate consignee in Florida is noted on the rail bill of lading. That bill shows Baltimore as the destination of the shipment. The shipper sends the rail bill of lading to the respondent with instructions as to the ultimate consignee. Upon the arrival of the goods at Baltimore, the rail carrier sends an arrival notice to the respondent; the latter advises the rail carrier of the ship which will transport the goods to Florida, and the goods are delivered to the respondent. The rail bill of lading is surrendered to the rail carrier, the charges of that carrier, unless they have been prepaid, are paid by the respondent which then issues its own bill of lading to the shipper, specifying its freight rate for the transportation of the goods by water from Baltimore to the point of destination in accordance with the separate advice which the respondent has received from the shipper. Upon delivery of the goods in Florida, the respondent collects from the consignee its own charges and also the rail charges which it has advanced, but the latter are collected, not as agent for or under any agreement with, the rail carrier, but because they have been advanced as an incident to the carrying out of the contract between the respondent and the shipper.

The question relates solely to the application of section 6 (1) of the Interstate Commerce Act providing for the filing of tariffs with the Interstate Commerce Commission. The requirement of the Shipping Act,[2] with which the respondent is said to have complied, as to filing tariffs with the United States Shipping Board, is not involved. Nor is any question presented under section 6 (13)[3] of the Interstate Commerce Act, added by the Panama Canal Act.[4] The provision of section 6 (1) of the Interstate Commerce Act applies to common carriers as these are described in section 1 of that Act, and the particular description with which we are here concerned is found in subdivision (1) (a) of that section relating to common carriers engaged in

"(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when

[2]U. S. Code, Tit. 46, sec. 817.

[3]U. S. Code, Tit. 49, sec. 6 (13).

[4]Act of August 24, 1912, c. 390, 37 Stat. 560, 568. See Chicago, Rock Island & Pacific Railway Co. v. United States, 274 U. S. 29, 36; United States v. New York Central Railroad Co., 272 U. S. 457, 462.

both are used under a common control, management, or arrangement for a continuous carriage or shipment."[5]

The Government concedes that the respondent was not required to file tariffs with the Commission "unless it was engaged in continuous interstate rail and water shipments pursuant to a common control, management, or arrangement" and that "there was no common control or management between respondent and the connecting railroads." The question is thus the narrow one whether there was a "common arrangement" for the rail and water shipment within the meaning of the statute.

It is apparent that a mere practical continuity in the transportation is not enough, as the question under the statute is not simply whether there was a continuous carriage or shipment, but whether that carriage or shipment was pursuant to a common arrangement.[6] The provision of the statute, expressing a distinction in the policy of the Congress with respect to water transportation, clearly indicates that it is permissible for a water carrier, receiving at its port a shipment which has been carried by rail from an interior point, to keep its own carriage distinct and independent. While a common arrangement may exist without the issue of a through bill of lading or any particular formality,[7] it is not to be inferred from circumstances which are entirely consistent with the independence which the statute recognizes. In this instance, the facts show that the respondent undertook to maintain its own carriage as distinct and independent by having its separate contract, its independent rate, its direct instructions from the shipper as to its own transportation. The fact that the respondent advised the rail carrier of the sailings of its ships, the place where goods would be received, and the amount of its charges for the water transportation, manifestly did not constitute a common arrangement with the railroad for that transportation. The respondent

[5]U. S. Code, Tit. 49, sec. 1 (1) (a). Compare Act of February 4, 1887, c. 104, sec. 1, 24 Stat. 379; Act of June 29, 1906, c. 3591, sec. 1, 34 Stat. 584; Act of June 18, 1910, c. 309, sec. 7, 36 Stat. 539, 544, 545; Transportation Act, 1920, sec. 400, 41 Stat. 456, 474.

[6]See Ex parte Koehler, 30 Fed. 867, 869, 870; Mutual Transit Company *v.* United States, 178 Fed. (C. C. A. 2d) 664, 666, 667.

[7]Cincinnati, New Orleans & Texas Pacific Railway Company *v.* Interstate Commerce Commission, 162 U. S. 184, 193; Baer Brothers Mercantile Company *v.* Denver & Rio Grande Railroad Company, 233 U. S. 479, 491.

could take delivery and pay the rail charges upon delivery without sacrificing its right to make, as it did make, its own separate contract directly with the shipper pursuant to which the goods were received and the payment made. The Government stresses the fact that circulars were issued by the railroads as to the respondent's method of shipping and that shippers were generally informed as to the way in which shipments from interior points destined to Florida ports would be handled. But this information merely gave the facts and did not alter the transaction. The respondent did not forfeit its independence merely by making its service convenient, still less by advising both the railroads and shippers of the terms of its service.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.